THE CIVIL CODE OF THE SOMALIA

TRANSLATED BY:

DR OSMAN MOHAMED ISMAIL

Law No: 37 Second, June, 1973.

THE CIVIL CODE OF SOMALI DEMOCRATIC REPUBLIC

The President of the Supreme Council of the Revolution.

HAVING SEEN in the first and second charter of the revolution

HAVING SEEN the approval of the supreme Council of the Revolution and the Council of the State Secretaries.

HAVING CONSIDERED the proposal of the Secretary of the State of Grace and Justice.

HAS ISSUED

The Following Law

ARTICLE 1

The attached text of Somali Civil Code is hereby approved

ARTICLE 2

The Italian copy signed by the President of the Supreme Council of the Revolution and the Secretary of the State of Grace and Justice, is the original copy and it deposited in the State Attorney's Office.

ARTICLE 3

The Somali civil law shall enter into force, starting on01st July, 1973 and any other provisions relating to civil articles that are enforced in the territory of the Somali democratic republic has been terminated.

Date: 02/06/1973 –Mogadishu.

The president of the supreme council of the revolution

Major General: Mohamed Siyad Barre

The Secretary of the state of Grace and justice.

Dr: Abdisalam Sheikh Hussein

SOMALI CIVIL CODE

PRELIMINARY PART

GENERAL PROVISIONS

CHAPTER ONE

LAWS AND ITS APPLICATIONS

SECTION ONE

LAWS AND RIGHTS

ARTICLE 1

1. Provisions of law govern all matters to which these provisions apply in letter and spirit.
2. In the absence of a provision of a law that is applicable, the Judge will decide according to the principles of Islamic Sharia. In the absence of such principles, the Judge will apply to the principles of natural justice and the rules of equity.

ARTICLE 2

A provision of a law can only be repealed by a subsequent law expressly providing for such repeal, or containing a provision inconsistent with a provision of the former law or regulating a matter previously regulated by a former law.

ARTICLE 3

Periods of limitation will be calculated according to the Gregorian calendar, unless expressly provided otherwise by a law.

ARTICLE 4

A person legitimately exercising his rights is not responsible for prejudice resulting thereby.

ARTICLE 5

A person legally exercising his rights is not responsible for damage resulting thereby.

1. The exercise of a right is considered unlawful in the following cases:

a. if the sole aim thereof is to harm another person;
b. If the benefit it is desired to realize is out of proportion to the harm caused thereby to another person;
c. If the benefit it is desired to realize is unlawful.

SECTION TWO

THE APPLICATION OF LAWS CONFLICTS IN TERMS OF TIME

ARTICLE 6

1. Legislative provisions as regards the legal capacity of a person are applicable to all persons who fulfil the conditions embodied in such provisions.
2. When a person, who was deemed to possess legal capacity in accordance with the provisions of a former law, becomes legally incapable in accordance with the provisions of a new law, such legal incapacity does not affect the validity of acts previously done by him.

ARTICLE 7

1. New legislative provisions as regards prescription apply from such time as they come into force in all cases in which the period of prescription has not been completed.
2. Former legislative provisions however, apply as regards the date of commencement of prescription, its suspension and its interruption in respect of the period prior to the application of the provisions of the new law.

ARTICLE 8

1. When the new law provides for a period of prescription shorter than the period provided for in the former law, the new period will apply from the date the new law came into force, even if the old period of prescription has already commenced to run.
2. If, however, the remaining period still to run under the former law is shorter than that fixed by the new law, the prescription shall be completed upon the expiry of such remaining period.

ARTICLE 9

Proof established in advance is governed by provisions of the law in force at the time when the proof was established or at the time when such proof should have been established.

CONFLICTS OF LAWS IN TEREMS OF LOCATION

ARTICLE 10

Somali law will rule to determine the nature of a legal relationship in order to ascertain the law applicable in the event of a conflict between various laws in any particular suit.

ARTICLE 11

1. The status and the legal capacity of persons are governed by the law of the country to which they belong by reason of their nationality. If however, in a transaction of a pecuniary nature, concluded and having effect in Somalia, and one of the parties is a foreigner without legal capacity and such lack of capacity is due to a reason that is not apparent and which cannot be easily detected by the other party, this reason has no effect on his legal capacity.
2. The legal status of foreign juristic persons such as companies, associations, foundations, or others, is subject to the law of the State in whose territory such juristic persons have established their actual principal seat of management. If however, a juristic person carries on its principal activities in Somalia, Somali law will be applied.

ARTICLE 12

The fundamental conditions relating to the validity of marriage are governed by the national law of each of the two spouses.

ARTICLE 13

1. The effects of marriage, including its effects upon the property of the spouses, are regulated by the national law of each of the two spouses if there is no common nationality, then applies to the nationality which the husband belongs at the time of conclusion of the marriage.
2. The same ruling stated in the previous paragraph applies to divorce and separation.
3. Whereas divorce is governed by the law of the country to which the husband belongs at the time of divorce.

ARTICLE 14

If, in the cases provided for in the two preceding articles one of the two spouses is Somali at the time of the conclusion of the marriage, Somali law alone shall apply except as regards the legal capacity to marry.

ARTICLE 15

1. Obligations as regards payment of alimony to relatives are governed by the national law of the person liable for such payment.
2. If the person entitled to the alimony is Somali national, the obligation of alimony is governed by the Somali law.

ARTICLE 16

The objective matters related to guardianship, custody, tutelage and other objective systems to protect persons lacking capacity shall be governed by the law of the person whose protection is required.

ARTICLE 17

1. Inheritances, wills and other dispositions taking effect after death are governed by the national law of the testator or the person disposing of property at death.
2. The form of a will however, is governed by the national law of testator at the time the will is made, or by the law of the country in which the will is made. The same principles apply to the form of other dispositions taking effect after death.

ARTICLE 18

Possession, ownership of immovable, movable and other real rights are regulated, by the law of the place in which the immovable and movable are located.

ARTICLE 19

1. Contractual Obligations are governed by the law of the domicile when such domicile is common to the contracting parties and in the absence of a common domicile by the law of the place where the contract was concluded. These provisions are applicable unless the parties agree, or the circumstances indicate that it is intended to apply another law.
2. Contracts relating to immovable are governed by the law of the place in which the immovable is situated.

ARTICLE 20

Contracts between living persons are governed as regards their form by the law of the country in which the contracts are concluded. They may also be governed by the law regulating the basic provisions of a contract, or by the law of the domicile of the parties or by their common national law.

ARTICLE 21

1. Non-contractual obligations are governed by the law of the state in whose territory the act that gave rise to the obligation took place.
2. When, however, the obligation arises from a tort, the provisions of the preceding paragraph shall not apply to an act which occurred abroad and which, although considered unlawful in accordance with the law of the country in which the act occurred, is considered lawful in Somalia.

ARTICLE 22

Principles of competence of courts and all questions of procedure are governed by the law of the country in which the action is brought, or in which the proceedings are taken.

ARTICLE 23

The provisions of the preceding articles only apply when no provisions to the contrary are included in a special law or in an International Convention in force in Somalia.

ARTICLE 24

The principles of Somali private international law apply in the case of a conflict of laws for which no provision is made in the preceding articles.

ARTICLE 25

1. In the case of a person of unknown nationality or of a person of plural nationality the law to be applied will be decided by the Judge.
2. Somali law shall apply, if a person is deemed in Somalia and has Somali nationality, and is at the same time deemed by one or more foreign states then applied to the law of that or those states.

ARTICLE 26

When, in accordance with the preceding provisions, it appears that the law to be applied is the law of a state in which several legal systems exist, the law applicable shall be determined by the internal law of that state.

ARTICLE 27

In the cases where a foreign law is applicable only the internal provisions of such foreign law shall apply to the exclusion of provisions relating to private international law.

ARTICLE 28

The provisions of a foreign law applicable by virtue of the preceding articles shall not be applied if these provisions are contrary to public policy or good morality.

CHAPTER TWO

SECTION ONE

NATURAL PERSONS

ARTICLE 29

1. Legal personality commences from the time a child is born alive and ends at death.
2. The law, however, determines the rights of a child in the womb of his mother.

ARTICLE 30

1. Birth and death are established by means of official registers specially kept for this purpose.
2. In the absence of such proof, or if the inaccuracy of the entries in these registers is established, proof may be established by any other means.

ARTICLE 31

Registers and declarations connected with births and deaths are regulated by a special law.

ARTICLE 32

Missing person and absent persons are subject to provisions contained in special laws; in the absence of such special laws, Islamic Sharia will be applied.

ARTICLE 33

Somali nationality is governed by a special law.

ARTICLE 34

1. The family of a person is composed of his relatives.
2. Persons having a common ascendant are deemed to be relatives.

ARTICLE 35

1. Direct lineal relationship is the relationship existing between ascendants and descendants.
2. Collateral relationship is the relationship existing between persons who have a common ascendant without one of them being a descendant of the other.

ARTICLE 36

The degree of relationship will be calculated, as regards direct lineal relationship, by ascending to the common ancestor and counting each relative excluding the common ancestor. The degree of relationship will be calculated, as regards collateral relationship by ascending from the descendant to the common ancestor, then descending to the other descendant. Each relative, excluding the common ancestor counts for one degree.

ARTICLE 37

The relatives of either of the two spouses are deemed to be relatives of the other spouse, in the same line and of the same degree.

ARTICLE 38

Every person is recognised by his name added by his father and grand-father's names, or his name and his family name.

ARTICLE 39

Changing names will be governed by special legislation.

ARTICLE 40

1. A domicile is the place where a person habitually resides.
2. A person may have more than one domicile at the same time, or he may has none.

ARTICLE 41

The place where a person exercises a trade or profession is considered as his domicile as regards matters carried on in connection with such trade or profession.

ARTICLE 42

1. The domicile of a minor, a person under legal disability, a missing person or an absent person will be the domicile of his legal representative.
2. A minor who has attained eighteen years and a person in a similar legal position shall nevertheless have his special domicile in respect of acts he is capable of performing in accordance with the law.

ARTICLE 43

1. A special domicile may be elected for the performance of a specific legal act.
2. The election of domicile must be evidenced by writing.
3. A domicile elected for the performance of a legal act shall be deemed to be the domicile in so far as all matters relating to such act are concerned, including the procedure for enforcement by legal means unless the election of domicile is expressly limited to certain special acts, excluding others.

ARTICLE 44

1. All persons attaining majority in possession of their mental faculties and not under legal disability, have full legal capacity to exercise their civil rights.
2. The majority of a person is fixed at eighteen years completed in accordance with the Gregorian calendar.

ARTICLE 45

1. A person devoid of discretion, owing to youth, feeble mindedness or insanity is incapable of exercising his civil rights.
2. A person who has not attained the age of seven is considered devoid of discretion.

ARTICLE 46

A person who has reached the age of discretion but has not attained majority and a person, who has attained his majority but is a prodigal or an imbecile, has a limited legal capacity according to the provisions of the law.

ARTICLE 47

Persons deprived of full or partial legal capacity are governed, as the case may be, by the rules of natural or legal guardianship or curatorship subject to the conditions and in accordance with the rules laid down by law.

ARTICLE 48

No person can renounce his legal capacity or modify the rules relating thereto.

ARTICLE 49

No person can renounce his personal liberty.

ARTICLE 50

A person, whose rights inherent in his personality have been unlawfully infringed, shall have the right to demand the cessation of the infringement and compensation for any damage sustained thereby.

ARTICLE 51

A person whose right to the use of his name is unlawfully disputed by another or a person whose name is unlawfully used by another shall have the right to demand cessation of the infringement and compensation for any damage sustained thereby.

JURISTIC PERSONS

ARTICLE 52

Juristic Persons are:

1. The state, the provinces, towns and villages in accordance with the provisions fixed by law; administrations, departments and other public institutions to which the law has granted the status of juristic persons.
2. awqaf.
3. Commercial and civil corporations.
4. Associations and foundations created in accordance with the subsequent provisions hereof.
5. Any group of persons or properties recognized as juristic persons by virtue of a provision of the law.

ARTICLE 53

1. A juristic person enjoys, within the limits established by law, all rights, with the exception of those rights, which are inherent in the nature of an individual.
2. A juristic person has:

a. its own patrimony;
b. legal capacity, within the limits fixed by its constitution or established by law;
c. the right to sue;
d. Its own domicile. This domicile is the place where its seat of management is situated. A corporation, whose seat of management is situated abroad but operates in Somalia, is deemed, in accordance with internal law, to have its seat of management at the place where its local seat of management is situated.

3. A juristic person has a representative to express its will.

ASSOCIATIONS

ARTICLE 54

1. An association is a group of permanent character, formed by a number of individuals or juristic persons with an object other than the realisation of material profit,
2. The association acquires its legal personality, by the decision of its recognition, issued by the secretary of the state for the ministry of interior, and publication of its articles of association.

ARTICLE 55

1. In order to be duly formed an association must have a written scheme of management signed by its founders.
2. The scheme of management of an association must contain the following particulars.

a. The name, object and seat of management of the association, and the seat of management must be situated in Somalia;
b. The first name, family name, nationality, profession and domicile of each of its founders;
c. The resources of the association:
d. The members that represent the association, their attributions and the methods of appointment and revocation of the members of these bodies;

e. The rules to be followed for the purpose of altering the scheme of management of the association.

ARTICLE 56

1. The scheme of management, of an association must not provide that the property of the association, will, upon dissolution, devolve of the members, their heirs or their families.
2. The provision does not apply to money assigned solely to funds for mutual assistance of for a pension of fund.

ARTICLE 57

1. An association may not own immovable and enjoy other real rights only in so far as it is necessary to do so for the realization of the objects for which it was formed.
2. This provision does not apply to associations whose objects are solely charitable, educational, or for the purpose of scientific research.

ARTICLE 58

1. An association, once constituted, acquires the status of a juristic person.
2. This status can be set up against a third party only after recognition of the scheme of management of the association.

ARTICLE 59

1. Publication shall be in accordance with the provisions of the law.
2. Failure to effect publication or the use of other means to evade legally establishing the existence of the association shall not prevent a third party availing himself against the association of the effects inherent in the status of a juristic person.
3. An association that has not complied with the formalities of publication, that has not been validly constituted or that has been formed secretly, shall nevertheless be held responsible for engagements undertaken by its managers or by those who act on its behalf. Execution in respect of such undertakings can be levied on the property of the managers, association or the property of those working on behalf.

ARTICLE 60

Amendments to the scheme of management of the association must be published in accordance with the provisions of Article 59. The amendment may only be set up against third parties from the date of publication.

ARTICLE 61

A resolution in general meeting is necessary for the approval of the budget and of the balance sheet, for an amendment of the scheme of management and the voluntary dissolution of the association.

ARTICLE 62

1. All members must be given notice to attend general meetings.
2. Resolutions in general meeting are taken by a majority of the members present or represented, unless the scheme of management provides otherwise.
3. Resolutions taken in general meeting as to an alteration to the scheme of management or the voluntary dissolution of the association are invalid unless these items were included in the agenda accompanying the convening notice. A resolution as to the amendment of the scheme of management must be passed by the absolute majority of the members of the association, and a resolution as regards dissolution or an amendment to the objects of the association, must be passed by two- thirds of the members of the association. All these provisions apply unless the scheme of management of the association requires a larger majority.

ARTICLE 63

1. All resolutions passed in general meeting which are contrary to scheme of management of the association may be annulled by the Judgment given by the Court of First Instance in whose district the association has its seat, provided that the annulment proceedings are instituted by one of the members, or by a third party having an interest, or by public prosecutors, within six months from the date of the resolution.
2. Annulment proceedings, however, cannot be set up against third parties, who may have acquired rights in good faith, as a result of the resolution in question.

ARTICLE 64

1. Acts performed by the managers of an association exceeding the limits of the powers attributed to them or contrary to the provisions of the law, or of the scheme of management of the association, or to a resolution in general meeting, can be annulled by a Judgment of the Court of the first Instance in whose district the association has its seat upon application by any one of the members, or by the liquidators or by the Public prosecutors.
2. Proceedings must be instituted within one year from the date of the act to be annulled.
3. Annulment proceedings cannot be set up against third parties who have acquired rights in good faith as a result of such acts.

ARTICLE 65

1. A member may retire at any time, unless he has undertaken to continue to be a member of the association for a fixed period.
2. A retiring member, as well as a member who has been expelled from an association, has no rights overthe association's property, except in cases where the association holds funds for mutual assistance and pensions as mentioned in paragraph 2 of Article 56, in which case the scheme of management mayprovide otherwise.
3. When a member dies, his heirs do not enter the association according to law.

ARTICLE 66

1. An association may be dissolved by a Judgment of the Court of the First Instance in whose district the association has its seat, upon application by a member, or other person having an interest, or by the Public prosecutor, if the association becomes unable to meet its liabilities, or if its property, or the income thereof, has been applied to objects other than those for which the association was formed, or if there has been committed a serious violation of the scheme of management of the association, or of the law or of public policy, or the number of its members become less than three.
2. The Court may reject an application for dissolution, to nullify the impugned conduct.

ARTICLE 67

When an association is dissolved, one or more liquidators shall be appointed In general meeting in case of voluntary dissolution, or by the Court In case of judicial dissolution.

ARTICLE 68

1. When the liquidation has been completed, the liquidator will proceed with the distribution of any remaining property of the association in accordance with the provisions laid down in the scheme of management of the association.
2. If the scheme of management of the association makes no provision for the distribution on liquidation or if the distribution cannot be made in the manner provided for in the scheme of management, the association in general meeting, in the case of voluntary dissolution, or the Court in case of judicial dissolution, will allocate the property of the dissolved association to another association or institution whose objects most closely approximately to the object of the dissolved association.

FOUNDATIONS

ARTICLE 69

A foundation is a juristic person created by setting aside for an indefinite period property for philanthropic, religious, scientific, artistic, sporting or other purpose of a charitable nature or of public interest, which does not have for its objects the realization of any material gain.

ARTICLE 70

1. A foundation may be created by an authenticated deed or by will.
2. This deed or will shall be deemed to be the constitution of the foundation. It must contain the following particulars:-

a. the name of the foundation, and its seat, which must be situated in Somalia;
b. the purposes for which the foundation is created;
c. An exact and detailed description of the property allocated to the foundation.
d. A scheme for the management of the foundation.

ARTICLE 71

The creation of a foundation shall be deemed, as regards the grantor's creditors, or his heirs, as a gift or as a will. If the creation of the foundation is detrimental to their Interests, they may exercise such rights of action as the law allows in similar cases as regards gifts and wills.

ARTICLE 72

When a foundation has been created by an authenticated deed, the grantor may before acknowledgment of the foundation by the appropriate authority, revoke it by another authenticated deed, and that is to be recognized according to the judgements of article 54.

ARTICLE 73

1. Publication formalities in respect of the foundation are affected at the request of the grantor, or of its first manager or of the authority in charge of the supervision of foundations.
2. The authority in charge of the supervision of the foundations will proceed with the necessary formalities of publication, immediately upon becoming aware of the creation of the foundation.
3. The provisions of Articles 58, 59 and 60 will apply to foundations.

ARTICLE 74

Foundations are subject to State supervision.

ARTICLE 75

The manager of a foundation must submit to the Supervisory authority the budget of the foundation, and its annual balance sheet with supporting vouchers, the manager shall also supply all other information or particulars required by the supervisory authority.

ARTICLE 76

The Court of the First Instance in whose district the foundation has its seat may upon legal proceedings being taken by the supervisory authority, order the following measures;-

a. The removal of managers found guilty of negligence or incapacity and managers who have not fulfilled the obligations imposed upon them by law or by deed of foundation, who have employed the property of the foundation in a manner contrary to the purpose of the foundation or to the object of the grantor, or who have, in the exercise of their functions, committed some other very serious faults.
b. the alteration of the scheme of management, or the alleviation, modification or suppression of the charges and conditions provided for in the deed of foundation, if such measures are necessary for the preservation of the property of the foundation, or for the realization of the objects for which the foundation was created;
c. the dissolution of the foundation, if it can no longer realize the objects for which It was created, or if the objects are no longer attainable or have become illegal or contrary to morality or to public policy;
d. The annulment of acts done by the managers in excess of the limits of the powers attributed to them or contrary to the provisions of the law or to the rules of the foundation. In such a case annulment proceedings must be commenced within two years from the date of the alleged wrongful act, without prejudice to third parties of good faith who have acquired rights by reason of the act.

ARTICLE 77

1. The Court, when pronouncing the suppression of the foundation, will appoint a liquidator and will give a decision as regards the ultimate destination of the property remaining after liquidation in accordance with the provisions of the foundation deed.
2. If the devolution of the property to the recipient designated in the deed becomes impossible, or if the foundation deed does not include the designation of any recipient, the Court will allocate the property to a destination as close as possible to the object for which the foundation was created.

ARTICLE 78

The provisions contained in this law relating to foundations are not applicable to foundations constituted in the form of Awqaf.

GENERAL PROVISIONS APPLICABLE BOTH TO ASSOCIATIONS AND TO FOUNDATIONS

ARTICLE 79

1. Associations whose purpose is the realization of a public interest and foundations may upon application, be recognised as institutions of public utility by a decree approving their constitution.
2. The decree may stipulate that the association shall be exempt from the restrictions as to its legal capacity laid down in Article 57.
3. The decree may impose special measures of supervision, such as the nomination of one or several managers by the Government, or any other measures as may be considered necessary.

ARTICLE 80

Charitable societies, co-operative societies, social foundations, and trade unions (syndicates) are regulated by law.

THE CLASSIFICATIONS OF THINGS AND PROPERTY

ARTICLE 81

1. Anything that is not outside the ambit of trade by its nature of by virtue of the law may be the object of proprietary rights.
2. Things outside the ambit of trade by their very nature are things that cannot be objects of exclusive possession. Things outside the ambit of trade by law are things which in accordance with the law cannot be objects of proprietary rights.

ARTICLE 82

1. Things which are fixed and which cannot be removed without damage are immovable. All other things are movables.
2. A movable placed by its owner in an immovable owned by him with the intention of serving or exploiting such immovable is considered an immovable by reason of its destined use.

ARTICLE 83

1. All real rights over immovable property including the right of ownership and all suits relating to a real right over an immovable are deemed to be immovable property.
2. All other proprietary rights are deemed to be movable property.

ARTICLE 84

1. Consumable things are those things whose utility, by reason of their destined use, consists in their consumption or disposal.
2. All things destined for sale in commercial establishments are deemed to be consumable.

ARTICLE 85

Fungibles are those things which can be replaced one by another in a payment and which it is customary in trade to estimate by number, measure, volume or weight.

ARTICLE 86

Rights in respect of a non-material object are regulated by special laws.

ARTICLE 87

Properties forming part of the public domain lose this status with the cessation of their allocation for public utility purposes. This cessation takes place by virtue of a law, or a decree, or in fact, or if the object of public utility for which they were allocated comes to an end such immovable and movable property is not alienable, is not liable to seizure or to acquisition by prescription.

FIRST PART

OBLIGATIONS OR PERSONAL RIGHTS

BOOK ONE

OBLIGATIONS GENERALLY

Chapter I

SOURCES OF OBLIGATIONS

SECTION 1

Contract

Element of Contract!

Consent

ARTICLE 88

A contract is the meeting of an offer issued by one of the contracting parties with the acceptance made by the other party and their concordance in such a manner as to produce their effect on the object of the contract and results in a binding obligation on each party in consideration of the obligation of the other party.

A meeting of more than two minds may agree to produce a legal effect.

ARTICLE 89

1. An intention may be declared verbally, in writing, by signs in general use, and also by such Conduct as in the circumstances of the case; leave no doubt as to its true meaning.
2. A declaration of intention may be implied when neither the law nor the parties require it to be expressed.

ARTICLE 90

A declaration of intention becomes effective from the time that it comes to the knowledge of the person for whom it was intended, and shall be deemed to have Knowledge of the declaration of intention from the time that it reaches him, unless there is evidence to the contrary.

ARTICLE 91

If the person who declares the intention dies or becomes legally incapable before the declaration of intention takes effect, the declaration of intention shall not be less effective at the time it comes to the knowledge of the person for whom It was intended, unless the contrary is shown by the declaration of intention or by the nature of the transaction.

ARTICLE 92

1. When a time limit is fixed for acceptance, the person who makes the offer is bound to maintain his offer until the expiration of the time limit.
2. The time limit may result from the circumstances or from the nature of the transaction,

ARTICLE 93

1. If at the time a contract is being framed an offer is made to a person present without a time limit being fixed for acceptance, the offeror is released from his offer if it is not accepted forthwith. This also applies if the offer is made by one person to another person by telephone or by any other similar means.
2. A contract is concluded, however, even if acceptance is not immediate when, during the interval between offer and acceptance, there is nothing to indicate that the offeror has withdrawn his offer and the declaration of acceptance is made before the end of the meeting at which the contract was being framed.

ARTICLE 94

1. Where the parties agree on the essential elements of the obligation and on all the other legitimate conditions which the parties consider them to be essential, reserving some detailed to be agreed upon at a later date and did not condition the formation of the contract on the agreement on these matters, the contract is considered formed.
2. If any difference arises as to these pending details, the judge shall decide thereon according to the nature of the transaction and the law provisions.

ARTICLE 95

Where the acceptance includes additions, restrictions or modifications to the offer, it shall be considered a rejection that includes a new offer.

ARTICLE 96

1. The contract between absent persons shall be considered formed at the place and time where and when the offeror has knowledge of the acceptance, unless there is an agreement or a law provision to the contrary.
2. The offeror is considered to have taken knowledge of the acceptance at the place and time where and when this acceptance has reached him, unless evidence to the contrary is established.

ARTICLE 97

1. In a case in which an offeror could not by reason of nature of the transaction in accordance with commercial usage, or account of other circumstances, the contract is deemed to have been concluded, if the offer is not refused within a reasonable time.
2. Failure to reply is equivalent to acceptance when the offer relates to dealing already existing between the parties, or when the offer is solely in the interests of the offered.

ARTICLE 98

No contract shall be concluded in auctions except by awarding the auction to the highest bid specified by the previous conditions, its report and announcement with the knowledge of the party auctioned the deal, and when there are no conditions, the best bid is determined according to the nature of the deal or customs.

ARTICLE 99

Acceptance in the case of a contract of adhesion is confined to adhesion to standard conditions which are drawn up by the offeror and which are not subject to discussion.

ARTICLE 100

1. An agreement by which the two parties, or one of them, promise to enter into a particular contract in the future, is only binding if all the essential points of the contract envisaged and the time when the contract should be concluded is stated.
2. When the law provides that a contract shall not be valid unless a certain form is observed, this form must also be observed in any agreement embodying a promise to enter into such a contract.

ARTICLE 101

If the party who has promised to enter into a contract refuses to do so and the other party takes legal proceedings against him to enforce the promise and the conditions required for the conclusion of the contract, especially those as to the form exist, the court produce a strong executive authority as a contract.

ARTICLE 102

1. In the absence of a clause to the contrary in the contract, the payment of earnest money at the time of the contract is concluded indicates that either party may withdraw from the contract.
2. The person who has paid the earnest money and withdrawn from the contract forfeits the earnest money and the person, who has received earnest money and withdraws from the contract, shall repay double the amount of the earnest money, even if the withdrawal does not cause any prejudice.

ARTICLE 103

1. When a contract is entered into by a representative shall be considered to the principal, will be the person who will be looked to in examining the question of vices of consent or the effects attached to the fact that the contracting party knew or should necessarily have been aware of certain special circumstances.
2. When however, the representative is a mandatory who acted in accordance with the principal precise instructions, the principal cannot plead the ignorance of his representative of circumstance which the principal knew or should necessarily have known.

ARTICLE 104

When a contract is concluded by a representative within the limits of his authority in the name of his principal, the rights and obligations resulting there from either be in favour or against shall be being on the principal.

ARTICLE 105

When a contracting party did not disclose at the time of the conclusion of a contract that he is acting as a representative, the contract only operates in favour of or binds the principal if the third party with whom the representative contracted should necessarily have known that the contracting party was the representative of the principal, or if it was of no importance to the third party whether he entered into the transaction with the principal or with the representative.

ARTICLE 106

If a representative and a third party with whom the representative concluded a contract were both unaware at the time the contract was concluded of the extinction of the representation, the effects of the contract concluded by the representative, whether they involve rights or obligations revert to the principal or his successor.

ARTICLE 107

Except where otherwise provided by law or by commercial rules, no one may contract with himself in the name of the person he represents, either for his own benefit or for that of a third party, without the authority of his principal, who nevertheless, in such a case may ratify the contract.

ARTICLE 108

Every person who has not been declared to be under total or partial legal incapacity has the legal capacity to conclude a contract,

ARTICLE 109

A minor lacking discretion has not the legal capacity to dispose of his property, all his acts, in law are deemed to be void.

ARTICLE 110

1. Pecuniary dispositions of the discerning minor are valid, if totally beneficial to him, and void if entirely detrimental.

2. All acts of disposition that may vary between being profitable or detrimental depend of the ratification of his guardian or court according to law, or of the minor after attaining legal age.

ARTICLE 111

A minor possessing discretion that has attained the age of eighteen years and has been authorized to take possession of his property in order to manage it or has taken possession of his by virtue of law may validly perform acts of management within the limits of the law.

ARTICLE 112

All persons suffering from insanity, mental derangement, or imbecility, and Prodigals, are interdicted by order of the judge. The interdiction shall be removed according to the rules and procedures set forth in the law.

ARTICLE 113

1. An act entered into by a person suffering from insanity or mental derangement after the registration of the sentence of the interdiction is null.
2. An act done before the registration of the sentence of interdiction is null only if the state of insanity or Mental derangement was a matter of common notoriety at the time the contract was entered into or if the other party had knowledge thereof.

ARTICLE 114

1. An act entered into by a person placed under interdiction for imbecility or prodigality after the registration of the sentence of interdiction, will be governed by the provisions regarding acts performed minors possessing discretion.
2. An act entered into before the registration of the sentence of interdiction shall only be void or voidable if unfair advantage has been taken of the condition of the person under interdiction or if there has been fraudulent collusion.

ARTICLE 115

1. The constitution of awqaf or the execution of a will by a person placed under Interdiction for prodigality or for imbecility is valid, if the Interdicted person has been duly authorized by the Court.

2. the management carried out by a person placed under interdiction for prodigality, who has been authorized to take possession of his property, are valid within the limits provided by law.

ARTICLE 116

1. If a person is deaf and dumb, deaf and blind or blind and dumb, and cannot by reason of his infirmity express his will, the Court may appoint a judicial adviser to assist him in connection with such act as may be necessary in his interests.
2. And its subject to voidable of all the actions for which the legal aid is decided, when was issued by the person, whose assistance was decided legally, if the action was issued after the decision to help was registered.

ARTICLE 117

Acts performed by tutors, guardians and curators shall be valid within the limits set forth in the law.

ARTICLE 118

A person under legal incapacity may demand the nullification of the contract, subject, however, to his liability to payment of damages if he has employed fraudulent method, to conceal his legal incapacity.

ARTICLE 119

Where a party to a contract commits a fundamental error, he may apply for nullification of the contract, provided that the other party had similarly committed the same error or had been cognizant of it or could have easily discovered it.

ARTICLE 120

1. A mistake is an essential mistake when its gravity reaches a critical level and the deceived party if he was knew the gravity would not have concluded the contract.
2. The mistake is deemed to be essential more particularly;

a. When it has a bearing on the quality of the thing which the parties have considered essential or which must be deemed essential, taking into consideration the circumstances surrounding the contract and the good faith that should prevail in business relationships.

b. When it has a bearing on the identity or on one of the qualities of the person with whom the contract is entered into, if this identity or this quality was the principal factor in the conclusion of the contract.

ARTICLE 121

In the absence of a provision of the law to the contrary, a mistake in law entails the nullification of the contract, if the mistake fulfils the elements of a mistake in fact in accordance with the two preceding Articles.

ARTICLE 122

Mere mistakes of calculation or clerical mistakes do not affect the validity of the contract; these errors must however be corrected.

ARTICLE 123

1. A party who committed a mistake cannot take advantage of the mistake in a manner contrary to the principles of good faith.
2. Such a party, moreover, remains bound by the contract which he intended to conclude, if the other party shows that he is prepared to perform the contract.

ARTICLE 124

1. A contract may be declared void on the grounds of fraudulent misrepresentation when the artifices practised by one of the parties, or by his representative, reached a fundamental level if other party knew would not have concluded the contract.
2. Intentional silence on the part of one of the parties as to a fact or as to the circumstances constitutes fraudulent misrepresentation if it can be shown that the contract would not have been concluded by the other party had he had knowledge thereof.

ARTICLE 125

A party who is the victim of fraudulent misrepresentation by a third party can only demand the avoidance of the contract if it is established that the other contracting party was aware of, or should have been aware of, the fraudulent misrepresentation.

ARTICLE 126

1. A contract is voidable as a result of duress if one of the parties has contracted under the stress of justifiable fear unlawfully instilled in him by the other party.
2. Fear is deemed to be justified when the party who invoke it has been led to believe, in view of the circumstance, that a serious and imminent danger to life, limb, honour or, property threatened him or others.
3. In appreciating the extent of duress, the sex, age, social position and the condition of health of the victim should be taken into consideration, as well as any other circumstance that might have aggravated the duress.

ARTICLE 127

1. If the obligations of one of the contracting parties are out of all proportion to the advantages that he obtains from the contract or to the obligations of the other contracting party and it established that the party who has suffered prejudice entered into the contract only as a result of the other party exploiting his obvious levity of character or his unbridled passion, the Judge may, at the request of the party so prejudiced, annul the contract or reduce the obligations of such party.
2. Proceedings instituted on such grounds shall be barred unless commenced within one year from the date of the contract.
3. In a contract entered into for valuable consideration the other party may avoid annulment proceedings by making such an offer as the Judge may consider adequate compensation to cover the lesion.

ARTICLE 128

The preceding Article shall apply subject to special provisions of the law relating to lesion in certain contracts and to the provision of the law as regards rates of interest.

ARTICLE 129

OBJECT

1. Things that may happen in the future may be the object of an obligation.
2. An agreement with regard to the succession of a living person is void, even If he consents to such an agreement, except in cases provided for by law.

ARTICLE 130

If the object of an obligation is something impossible in itself the contract is void.

ARTICLE 131

1. When the object of an obligation is not certain as to its nature it must at least be determinate as to its kind and quality, as otherwise the contract is void.
2. The object of obligation may, however only be determinate as to kind, it's the contract provides a method of ascertaining the quality, if there is no agreement as to the degree of quality cannot be ascertained by usage or by any other circumstances, the debtor must supply an article of average quality.

ARTICLE 132

When the object of an obligation is a sum of money, the debtor is bound only to the extent of the actual figure or the sum of money stated in the contract, without consideration any increase or decrease in the value of such money at the date of payment.

ARTICLE 133

1. A contract is void if its object is contrary to public policy or morality, likewise the contract is void if an obligation is assumed for an unlawful consideration.

ARTICLE 134

1. An obligation is deemed to have a lawful consideration, even if such consideration is not expressed in the contract, unless the contrary is proved.
2. The consideration expressed in the contract is deemed to be the true consideration until evidence to the contrary is produced. Upon evidence being produced that the consideration is feigned, the onus falls on the person who maintains that the obligation has another lawful consideration of proving his contention.

ARTICLE 135

When the law recognises the right of one of the contracting parties to procure the nullification of the contract the other party cannot avail himself of the right.

ARTICLE 136

1. The right to procure nullification of the contract is extinguished by an express or implied ratification of the contract.
2. Ratification is retroactive to the date of the contract without prejudice to the rights of third parties.

ARTICLE 137

1. The right to procure nullification of a contract is prescribed if not invoked within three years.
2. This period runs, in case of legal incapacity, from the date of the cessation of such incapacity, in the case of mistake or fraudulent misrepresentation from the date the mistake or representation is discovered, in the case of duress from the date it has ceased. In no case can nullification be claimed as a result of mistake, fraudulent misrepresentation, or duress when fifteen years have elapsed from the date of the conclusion of the contract?

ARTICLE 138

1. When a contract is void its nullity may be invoked by every person having an interest in the contract and such nullity may also be ordered by the Court on it is own Initiative. Nullity cannot disappear by ratification of the contract.
2. Nullity proceedings are prescribed after fifteen years from the date of the conclusion of the contract.

ARTICLE 139

1. When a contract is void or annulled the parties are reinstated in their position prior to the contract, if such reinstatement is impossible damages equivalent to the loss may be awarded.
2. When, however a contract concluded by a person without legal capacity is annulled by reason of his lack of legal capacity he shall only be liable to refund such profits as he derived from the performance of the contract.

ARTICLE 140

When part of a contract is void or voidable, that part alone will be annulled, unless it is established that the contract would not have been entered into without such a part, in this case the contract will be void as a whole.

ARTICLE 141

When a void or voidable contract contains the elements of another contract, the contract will be deemed to be valid to the extent of the other contract if it appears that the parties intended to conclude such another contract.

SECTION 2

EFFECTS OF THE CONTRACT

ARTICLE 142

Subject to the rules relating to successions, the effects of a contract apply to the parties and to their universal successors in title, unless it follows from the contract, from the nature of the transaction or from a provision of the law that the effects of the contract do not pass to the universal successors in title of a party.

ARTICLE 143

Obligations and personal rights created by contracts relating to property that has subsequently been transferred to particular successors in title are transferred to such particular successors in title together with the property, when such obligations and rights constitute essential elements of the property and the particular successors in title had knowledge at the time of the transfer of the property to them.

ARTICLE 144

1. The contract makes the law of the parties. It can be revoked or altered only by mutual consent of the parties or for reasons provided for by the law.

2. When, however as a result of exceptional and unpredictable events of a general character, the performance of the contractual obligation without becoming impossible becomes excessively onerous in such way as to threaten the debtor with exorbitant loss, the Judge may, according to the circumstances, and after taking into consideration the interests of both parties, reduce to reasonable limits the obligation that has become excessive. Any agreement to the contrary is void.

ARTICLE 145

1. A contract must be performed in accordance with its contents and in compliance with the requirements of good faith.
2. A contract binds the contracting party not only as regard its expressed conditions, but also as regards everything which, according to law, usage, and equity, is deemed in view of the nature of the obligation.

ARTICLE 146

When a contract of adhesion contains arbitrary conditions, the Judge may modify these conditions or relieve the adhering party of the obligation to perform these conditions in accordance with the principles of equity. Any agreement to the contrary is void.

ARTICLE 147

1. When the wording of a contract is clear it cannot be deviated from in order to ascertain by means of interpretation the intention of the parties.
2. When a contract has to be construed it is necessary to ascertain the common intention of the parties and to go beyond the literal meaning of the words, taking into account the nature of the transaction as well as that loyalty and confidence which should exist between the parties in accordance with commercial usage.

ARTICLE 148

1. In cases of doubt the interpretation shall be in favour of the debtor.
2. The interpretation, however, of obscure clauses in a contract of adhesion must not be detrimental to the adhering party.

ARTICLE 149

A contract does not create obligations binding upon third parties, but may create rights in their favour.

ARTICLE 150

1. A person who finds himself to procure the performance of an obligation by a third party does not in so doing bind the third party, If the third party refuses to perform the obligation the person who bound himself to obtain such performance will be liable to indemnify the other contracting party by himself performing the obligation, the performance of which he undertook to procure.
2. In the event of the third party's consent to perform, the obligation of his consent is effective only from the time that it's given, unless indicated expressly or implication that the consent begins from the date of the agreement between the contracting parties.

ARTICLE 151

1. A person may by a contract in his own name stipulate that an obligation shall be performed for the benefit of a third party, when he has a personal interest, material or moral, in the performance of such an obligation.
2. As a result of such a stipulation and in the absence of an agreement to the contrary the third-party beneficiary acquires a direct right against the person who undertook to perform the obligation and may call upon him to do so. The person who gave the undertaking may set up against the beneficiary the defences arising out of the contract.
3. The stipulator may also demand the performance of the obligation in favour of the beneficiary, unless it appears from the contract that performance may only be demanded by the beneficiary.

ARTICLE 152

1. Its permissible for the party to the agreement, but not his creditors or heirs, to revoke the agreement for a third party, provided that the revocation is made before the beneficiary informs the debtor of the stipulator of his wish to have the benefit of the stipulation, and that the revocation is not contrary to the spirit of the contract.

2. In the absence of any express or implied agreement to the contrary, the revocation does not liberate the debtor Vis-a-vis- the stipulator, the stipulator may substitute a new beneficiary in the place of the former beneficiary, or may retain for him the benefit of the stipulation.

ARTICLE 153

A stipulation in favour of a third party may be made in favour of future persons or institutions, and also in favour of persons or institutions who are not Identified at the date of the contract, provided that these persons or institutions can be identified at the date when the effects of the contract come into operation in accordance with the stipulation.

SECTION 3

DISSOLUTION OF A CONTRACT

ARTICLE 154

1. In bilateral contracts, if one of the parties does not perform, his obligation, the other party may after serving a formal summons on the debtor, demand the performance of the contract or its rescission with damages if due in either case.
2. The judge may grant additional time to the debtor if it's necessary as the result of the circumstances. The judge may also reject an application for rescission when the part of the contract with the debtor has failed to perform it due to importance in comparison with the obligations in its entirety.

ARTICLE 155

The parties that in case of non-performance of the obligations generated from the contract, the contract will be deemed to have been rescinded ipso facto without a Court order.

Such an agreement does not release the parties from the obligation of serving a formal summons, unless the parties expressly agree that such summons will be dispensed with.

ARTICLE 156

When an obligation arising out of a bi-lateral contract is extinguished by reason of impossibility of performance correlative obligations are also extinguished and the contract is rescinded ipso facto.

ARTICLE 157

When a contract is rescinded the parties are reinstated in their former position. If reinstatement is impossible the Court may award damages.

ARTICLE 158

When, in the case of a bi-lateral contract, correlative obligations are due for performance, either of the contracting parties may abstain from the performance of his obligation if the other party does not perform his obligation.

CHAPTER TWO

UNILATERAL UNDERTAKINGS

ARTICLE 159

1. A person who makes a promise to the public of a reward in exchange for a specified service is bound to pay the reward to the person who performs the service, even if he acted without thought of the promise of reward, or without knowledge thereof.
2. When the person who made the promise does not fix a period of time for the performance of the service, he may withdraw his promise by means of a notice to the public, but such withdrawal will not affect the rights of a person who has already performed the service. The right of action for the reward will be forfeited if such action is not lodged within six months from the date of the publication of the notice of withdrawal.

CHAPTER THREE

UNLAWFUL ACTS

SECTION ONE

LIABILITY ARISING FROM PERSONAL ACTS

ARTICLE 160

Every fault which causes injury to another imposes an obligation to make reparation upon the person by whom it is committed.

ARTICLE 161

1. Every person in possession of discretion is responsible for his unlawful acts.
2. When an injury is caused by a person not in possession of discretion the Judge may, if no one is responsible for him, or if the victim of the injury cannot obtain reparation from the person responsible, condemn the person causing the injury to pay equitable damages, taking into account the position of the parties.

ARTICLE 162

In the absence of a provision of the law or an agreement to the contrary, a person is not liable to make reparation if he proves that the injury resulted from a cause beyond his control, such as unforeseen circumstances, force majeure, the fault of the victim or of a third party.

ARTICLE 163

A person who causes an injury to another in legitimate defence of his person, or property, or of the person or property of a third party, is not responsible, provided that he does not exceed the measures necessary for his defence, as otherwise he will be liable to damages assessed in accordance with the principles of equity.

ARTICLE 164

A public official is not responsible for an act by which he causes injury to another person if he acted in pursuance of an order received from a superior, which order he had to obey or thought he had to obey, and if he shows that he believed that the act performed was lawful, and that he had reasonable grounds for such belief and that he acted with care.

ARTICLE 165

A person, who causes injury to another person in order to avoid greater injury that threatens him or a third party, is only responsible for such damages as the Judge deems equitable.

ARTICLE 166

When several persons are responsible for an injury they are jointly and severally responsible to make reparation for the injury. The liability will be shared equally between them, unless the Judge fixes their individual share in the damages due.

ARTICLE 167

The Judge shall decide, in accordance with the provisions of Articles 218 and 219 and in the light of the circumstances, the extent of the damages for the loss suffered by the victim. If the Judge is not in a position at the time of the judgment to fix definitely the extent of the injury lie, may allow the victim a delay within which he may claim reassessment of the damages.

ARTICLE 168

1. The Judge shall decide the method of payment of damages in accordance with the circumstances. The damages may be paid by instalments, or in the form of a regular periodical payment, in either of which cases the debtor may be ordered to provide security.
2. Damage, will consist of a money payment, upon the demand of the victim, however, the judge may in accordance with the circumstances, order that the damage be made good by the restoration of original position, or by the performance of a prestation that has a connection with the unlawful act.

ARTICLE 169

1. An action for damages arising from an unlawful act is prescribed after three years from the date upon which the victim knew of the injury and the identity of the person who was responsible. An action for damages is prescribed in any case after ten years from the date on which the unlawful act was committed.

2. When a claim arises out of a penal offence and the penal action is not prescribed after the delays set out in the preceding paragraph, the action for damages is only prescribed when the penal action itself is prescribed.

SECTION TWO

LIABILITY ARISING FROM THE ACTS OF ANOTHER

ARTICLE 170

1. A person who is, by law or by agreement, entrusted with the supervision of a person who on account of his minority or his mental or physical condition, requires supervision, is liable for damages for injuries caused to a third party by unlawful acts of the person under his supervision. The responsibility exists even when the person causing the Injury is a person who is deprived of discretion.
2. A minor is deemed to require supervision until he has attained eighteen years or if, having attained that age; he is under the care of a person in charge of his upbringing. The supervision of a minor is the responsibility of his schoolmaster or of the person under whose supervision he works during the time he is under the care of such master or of such person under whom he works. The supervision of a wife who is a minor is the responsibility of her husband or of the person who is responsible for the supervision of the husband,
3. A person who is entrusted with the supervision of another person may escape liability by proving that he performed his duty of supervision or that the injury could not have been prevented, even if he had exercised the necessary care.

ARTICLE 171

1. A master is liable for the damage caused by an unlawful act of his servant, when the act was performed by the servant in the course, or as a result of his employment.
2. The relationship between master and servant exists even when the master has not been free to choose his servant, provided that he has actual powers of supervision and control over his servant.

ARTICLE 172

A person responsible for an act of another person has a claim for redress against that other person to the extent that the other person is responsible for the reparation of the injury.

SECTION THREE

LIABILITY ARISIG FROM THINGS

ARTICLE 173

A person in charge of an animal, even if he is not its owner, is liable for any harm done by the animal, even if the animal strays or escapes, unless such person shows that the accident was due to a cause beyond his control.

ARTICLE 174

1. A person in charge of a building, even if he is not the owner, is liable for damage caused by the collapse of the building, even if such collapse is only partial, unless he shows that the accident did not occur as a result of negligent maintenance, or the age of, or a defect in the building.
2. A person who is in danger of damage from a building is entitled to call on the owner to take the necessary precautions to prevent the danger, and if the owner fails to take such precautions, should obtain an order from the court authorizing him to take the necessary precautions himself at the cost of the owner.

ARTICLE 175

Whoever is in charge of a thing whose supervision is requires special care, or of a machine, is liable for damage caused by it, unless he shows that the damage was due to a cause beyond his control, and without prejudice to special provisions of the law in this respect.

SECTION FOUR

ENRICHMENT WITHOUT JUST CAUSE

ARTICLE 176

A person even one lacking discretion, without just cause enriches himself to the detriment of another person, is liable to the extent of his profit, to compensate such other person for the loss sustained by him, this obligation remains even if the profit has disappeared at a later date.

SECTION FOUR

ARTICLE 177

A claim for compensation for enrichment without just cause is prescribed after three years from the date on which the injured person knew of his right to be compensated and in any case after fifteen years from the date that the right arose.

SECTION ONE

PAYMENT NOT DUE

ARTICLE 178

1. Whoever receives, by way of payment, which not owing to him, is bound to return it.
2. There is however, no obligation to restitution when the payer knew that he was not under an obligation to pay, unless he was legally incapable or unless he paid under duress.

ARTICLE 179

A payment which was not due may be recovered, if it was made in the performance of an obligation whose cause had not materialized or had ceased to exist.

ARTICLE 180

1. Restitution may also be made of a payment effected in the performance of an obligation which had not at the time fallen due; if the payer was not aware that payment was not then due.
2. A creditor may, however, limit the restitution to the profit he has gained as a result of the premature payment to the extent of the loss suffered by the debtor.

When the obligation which has not fallen due is for a sum of money, the creditor must restitute to the debtor interest thereon at the legal or at an agreed rate for the time to run until the due date of payment.

ARTICLE 181

Restitution is not due of a payment effected by a person other than the debtor if the creditor, acting in good faith, has in consequence of such payment given up his document of title, or his security or allowed his claim against the real debtor to be prescribed. The real debtor must in such a case indemnify the third party who made the payment.

ARTICLE 182

1. When a person has received in good faith that which is not due to him he is bound only to restitute that which he has received.
2. If he has received in bad faith he is bound to restitute in addition to the interest and profit that he has gained or that he has failed to gain by neglect on the thing unduly received, from the date of payment or from the date he became of bad faith.
3. In any case, a person who has received that which is not due to him is bound to restitute the interest and profit thereon from the date of a claim in the Courts.

ARTICLE 183

When a person who has received that which was not due to him has not the legal capacity to enter into a contract he is bound only to the extent of his profit.

ARTICLE 184

A claim for restitution of a payment unduly received is prescribed after three years from the day on which the payer knew of his right to claim restitution and in any case after fifteen years from the date upon which the right arose.

SECTION TWO

VOLUNTRY AGENCY

ARTICLE 185

There is a voluntary agency when one person of his own accord knowingly assumes the management of an urgent business of another person and on that person's behalf without being bound to do so.

ARTICLE 186

Voluntary agency also exists even when a voluntary agent manages the affairs of another person whilst at the same time looking after his own business, because of a connection between the two businesses of such a kind that one of them cannot be managed separately from the other,

ARTICLE 187

The rules of mandate (Agency) apply if the person for whom the voluntary agent acts ratifies his act.

ARTICLE 188

A voluntary agent must continue work he has commenced until the person for whom he acts is in a position to do so himself. He must also, as soon as he is able to do so, inform the person for whom he acts of his intervention.

ARTICLE 189

1. A voluntary agent must use in the management of the work he has undertaken all the care that one would expect from a reasonable person; otherwise he shall be responsible for his mistakes. The judge may, however, reduce or exempt the amount of damages due as a result of such mistakes, if circumstances justify such a reduction or exemption.
2. When a voluntary agent delegates to a third party the whole or part of the work of which he has assumed the management, he shall be responsible for the acts of his delegate, without prejudice to the right of the person for whom he acts to his direct remedy against the delegate.

ARTICLE 190

The voluntary is bound by the same obligations as a mandatory as regards the restitution of that which he received as a result of the voluntary agency and must submit an account for his acts.

ARTICLE 191

1. In the event of the death of a voluntary agent, his heirs are bound by the same obligations as those of a mandatory.
2. In the event of the death of the person for whom he acts, the voluntary agent is bound by the same obligations to the heirs as he was to the person of whom they were the successors in title.

ARTICLE 192

A voluntary agent is deemed to be a representative of the person for whom he has acted, if he has devoted to the management of the work the care of a reasonable person, even if the object in view has not been achieved. The person for whom the voluntary agent has acted will be bound to carry out the obligations entered into on his behalf by the voluntary agent, to indemnify him against all undertakings assumed by him, to reimburse him monies usefully or necessarily expended by him which are justified by the circumstances and to indemnify him in respect of any loss he has suffered as a result of his management. The voluntary agent is not entitled to any remuneration for his work, unless the work comes within the scope of his professional business.

ARTICLE 193

1. If a voluntary agent is not legally capable of entering into contracts, he will only be responsible for his management to the extent of his profit there from, provided that his liability does not result from an unlawful act.
2. The person for whom the voluntary agent acts remains however, fully responsible, even if he himself is legally incapable of entering into a contract.

ARTICLE 194

A claim arising from voluntary agency is prescribed after three years from the day that each party had knowledge of his right and in any case after fifteen years from the day on which the right arose.

CHAPTER FIVE

THE LAW

ARTICLE 195

Obligations arising from the law on acts other than contract, unilateral undertaking, injury act and profitable act shall be governed by the provisions of the law giving rise to such obligations.

PART TWO

THE EFFECTS OF OBLIGATIONS

ARTICLE 196

1. An obligation is enforceable against the debtor.
2. The performance of a natural obligation, however, cannot be enforced.

ARTICLE 197

The Judge shall decide, in the absence of any provision of the law, whether a natural obligation exists, there cannot ever be a natural obligation that is contrary to public policy.

ARTICLE 198

A debtor cannot claim restitution of that which he has voluntarily given to another with the object of discharging a natural obligation.

ARTICLE 199

A natural obligation may constitute a valid cause for a civil obligation.

SECTION

SPECIFIC PERFORMANCE OF OBLIGATIONS

ARTICLE 200

1. A debtor shall be compelled, upon being summoned to do so in accordance with Articles 216 and 217, specifically to perform his obligations, if such performance is possible.
2. When however, specific performance is too onerous for the debtor, he may limit performance to payment of a sum of money as indemnity, provided that this method of performance does not seriously prejudice the creditor.

ARTICLE 201

Subject to the rules with regard to transcription, an obligation to transfer ownership or any other real right transfers ipso facto that right, if the object of the obligation is specifically identified and is owned by the debtor without prejudice to the rules related to registration.

ARTICLE 202

1. When an obligation to transfer a real right has for its object a thing which is described only as regards its species, the right is not transferred, unless the object is identified as regards its individuality.
2. If, however, the debtor does not perform his obligation, the creditor may, upon an order of the judge, or in case of urgency even without such an order, acquire, at the expense of the debtor, an article of the same kind. He may also claim the value of the article without prejudice to his rights to damages, in either case.

ARTICLE 203

An obligation to transfer a real right includes that of the delivery of the article and of the preservation thereof up to the time of delivery.

ARTICLE 204

1. When a debtor is under an obligation to deliver something, he will be responsible if he fail to deliver the thing, after having been formally summoned to do so, for the loss thereof, even if the risk of loss prior to the issue of the summons was the liability of the creditor.
2. The risk of loss, however, does not pass to the debtor, even upon the issue of a formal summons, if he establishes that the thing would also have perished in the keeping of the creditor if it had been delivered to him, unless the debtor has accepted to take accidental loss at his own risk.
3. The risk of loss of a stolen thing, no matter how the thing perishes or is lost, is the responsibility of the thief.

ARTICLE 205

When the contract or the nature of the obligation demands that the obligation to do something shall be performed by the debtor personally, the creditor may refuse the performance of the obligation by any person other than the debtor.

ARTICLE 206

1. In the case of non-performance by the debtor of an obligation to do something, the creditor may apply to the Court for an order to carry out the obligation at the cost of the debtor, if this is possible.
2. In case of urgency, the creditor may carry out the obligation at the cost of the debtor without an order from the Court.

ARTICLE 207

When the nature of the obligation so permits, a judgement may, in case of an obligation to do something, take the place of the performance of the contract.

ARTICLE 208

1. When the contract or the nature of the obligation demands that the obligation to do something shall be performed by the debtor personally, the creditor may refuse the performance of the obligation by any person other than the debtor.

He may also obtain a judgement ordering the debtor to perform the obligation, and to pay a penalty if he abstains from performing his obligation.

2. If the court finds that the amount of the penalty is insufficient to make the debtor perform his obligation, it may increase the penalty each time that he considers that it is desirable to do so.
3. After specific performance has been carried out or when a debtor has persisted in his refusal to perform the obligation, the judge shall fix the amount of damages that the debtor shall pay, taking into account the prejudice suffered by the creditor and the intransigent attitude of the debtor.

ARTICLE 209

When a debtor infringes an obligation to refrain from doing something the creditor may demand the suppression of that which he has done in contravention of his obligation. The creditor may apply to the Court for an order authorising him to proceed himself with such suppression at the cost of the debtor without prejudice to his right of compensation.

ARTICLE 210

1. When the specific performance of an obligation is impossible or not practicable, unless performed by the debtor himself, the creditor may obtain a Judgment ordering the debtor to perform the obligation and to pay a penalty if he abstains from performing his obligation.
2. If the Judge finds that the amount of the penalty is insufficient to make the debtor perform his obligation he may increase the penalty each time that he considers it is desirable to do so.

ARTICLE 211

After specific performance has been carried out or when a debtor has persisted in his refusal to perform the obligation the Judge shall fix the amount of damages that the debtor shall pay, taking into account the prejudice suffered by the creditor and the unjustifiable attitude of the debtor.

CHAPTER TWO

COMPENSATION IN LIEU OF PERFORMANCE

ARTICLE 212

When specific performance by the debtor is impossible he will be condemned to pay damages for non-performance of his obligation, unless he establishes that the impossibility of performance arose from a cause beyond his control. The same principle will apply if the debtor is late in the performance of his obligation.

ARTICLE 213

The Judge may reduce the amount of damages or may even refuse to allow damages if the creditor by his own fault has contributed to the cause of, or increased the loss.

ARTICLE 214

1. The debtor may by agreement accept liability for unforeseen events and for cases of force majeure.
2. The debtor may by agreement be discharged from all liability for his failure to perform the contractual obligation, with the exception of liability arising from his fraud or gross negligence. The debtor may, nevertheless stipulate that he shall not be liable for fraud or gross negligence committed by persons whom he employs for the performance of the obligation.
3. Any clause discharging a person from responsibility for unlawful acts is void.

ARTICLE 215

Subject always to any provision of the law or agreement to the contrary, compensation shall not be due unless the debtor has been formally summoned.

ARTICLE 216

A debtor is formally summoned by a summons served through the court or any equivalent act, the summons may be by post in the manner provided for in the code of civil and commercial procedure, or may result from agreement stipulating that the debtor shall be considered to in default by the mere fact of the expiration of the time period without any other formality being required.

ARTICLE 217

A formal summons to the debtor will not be necessary in the following cases:

a. If the performance of the obligation becomes impossible or without interest by an act of the debtor.
b. If the object of the obligation is the payment of damages in respect of an unlawful act.
c. If the object of the obligation is the restitution of a thing that the debtor knew to have been stolen or of a thing that he received knowing that it was not due to him.
d. If the debtor declares in writing that he does not intend to perform his obligation.

ARTICLE 218

1. The court will fix the amount of damages, if it has not been fixed in the contract or by law. The amount of damages includes losses suffered by the creditor and profits of which he has been deprived, provided that they are the normal result of the failure to perform the obligation or of delay in such performance. These losses shall be considered to be normal result, if the creditor is not able to avoid them by making a reasonable effort.
2. When, however, the obligation arises from contract, a debtor who has not been guilty of fraud or gross negligence will not be held liable for damages greater than those which could have normally been foreseen at the time of entering into the contract.

ARTICLE 219

1. Damages also include compensation for moral prejudice. The right to compensation, for moral prejudice cannot however, is transmitted by a third party, unless it has been fixed by agreement or unless it has been the subject of legal proceedings.
2. The judge may award compensation for moral prejudice only to spouses and to relatives up to the second degree, by reason of grief caused to them by the death of the victim.

ARTICLE 220

The parties may fix in advance the amount of damage, either in the contract or in a subsequent agreement, subject to the provisions of Articles 212 to 217.

ARTICLE 221

1. Damages fixed by agreement are not due; if the debtor establishes that the creditor has not suffered any loss.
2. The court may reduce the amount of these damages, if the debtor establishes that the amount fixed was grossly exaggerated or that the principal obligation has been partially performed.
3. Any agreement contrary to the provisions of the two preceding paragraphs is void.

ARTICLE 222

When the loss exceeds the amount fixed by the contract, the creditor cannot claim an increased sum, unless he is able to prove that the debtor has been guilty of fraud or gross negligence.

ARTICLE 223

When the object of an obligation in the payment of a sum of money of which the amount is known at the time when the claim is made, the debtor shall be bound, in case of delay in payment, to pay to the creditor, as damages for the delay interest at the rate of four per cent in civil matters and five per cent in commercial matter, Such interest shall run from the date of the claim in court unless the contract or commercial usage fixes another date. This article shall apply unless otherwise provided in the law.

ARTICLE 224

1. The parties may agree upon another rate of interest either in the event of delay in effecting payment or in any other case in which interest has been stipulated, provided that it does not exceed 10%. If the parties agree to a rate exceeding ten percent the rate will be reduced to ten percent and any surplus that has been paid shall be refunded.

2. Any commission or other consideration of whatsoever nature stipulated by the creditor which, together with the agreed interest exceeds the maximum limits of interest set out above will be considered as disguised interest and will be subject to reduction, if it is not established that this commission or consideration is in respect of a service actually rendered by the creditor or of a lawful consideration.

ARTICLE 225

Moratorium interest, whether fixed by law or agreement, is due without the creditor being obliged to prove loss as a result of delay.

ARTICLE 226

If a creditor, whilst claiming his rights, has in bad faith, prolonged the duration of the litigation, the Judge may reduce the legal or contractual interest or may refuse to allow interest for the whole of the period during which the litigation has been unjustifiably prolonged.

ARTICLE 227

In a distribution of the price of expropriated property creditors admitted to the distribution will only be entitled, as from the date of sale by auction, to moratorium interest on amounts allocated to them in the distribution, if the purchaser is bound to pay interest on the price, or if the Court Treasury is bound to pay interest as a result of the deposit of the price at the Treasury and only to the extent of interest due by the purchaser or by the Treasury, which interest will be distributed amongst all the creditors pro rata.

ARTICLE 228

A creditor may demand damages in addition to interest if he establishes that a loss, in excess of an interest, was due to bad faith on the part of the debtor.

ARTICLE 229

Subject to any commercial rules or practice to the contrary, interest does not run on outstanding interest and in no case shall the total interest that the creditor may collect exceed the amount of the capital.

ARTICLE 230

The legal rate of commercial interest on current accounts varies according to the local market rate applicable, and capitalization is effected on current accounts according to commercial usage.

CHAPTER THREE

MEANS OF REALISING AND SECURING THE RIGHTS OF CREDITORS

ARTICLE 231

1. The debts of a debtor are secured by all his property
2. Subject to any right of preference acquired in accordance with law all creditors are treated as regards this security on a footing of equality.

ARTICLE 232

MEANS OF REALIZING THE RIGHTS OF CREDITORS

1. Every creditor, even if his claim has not fallen due, may exercise in the name of his debtor all his debtor's rights of action save only those that are purely personal or cannot be attached.
2. If he proves that the debtor has not exercised such rights and that his failure to exercise them may cause his insolvency or may increase such insolvency, the creditor need not necessarily formally summon the debtor to exercise his rights but he must always join the debtor in the proceedings.

ARTICLE 233

A creditor, in the exercise of his debtor's right, is deemed to be the debtor's representative. The proceeds resulting from the exercise of such rights fall into the patrimonial of the debtor and serve as security to all his creditors.

ARTICLE 234

Any creditor whose claim has fallen due and whose debtor has entered into an act of alienation prejudicial to him may demand that such act be declared void, as far as he is concerned, if such act has either diminished his (the debtor's) rights or increased his obligations, and has in consequence resulted in, or increased his insolvency, when the conditions provided for in the following Article are all present.

ARTICLE 235

1. If the act by the debtor is for valuable consideration it can only be held invalid as against the creditor if made by the debtor with the intent to defraud and if the other party to the contract was aware of the fraud. It suffices for the act to be considered fraudulent if the debtor knew, at the time that it was effected, that he was insolvent; the other party is deemed to have had knowledge of the fraud of the debtor if he was aware of the debtor's insolvency,
2. If however, the act entered into by the debtor was gratuitous it is not valid as against the creditor, even if the transferee acted in good faith and it is established that the debtor did not commit fraud.
3. If a transferee disposes of property transmitted to him by a debtor for valuable consideration, a creditor can only claim avoidance of the act by the debtor if it was made for valuable consideration and if the second as well as the first transferee both knew of the debtor's fraud, and when the act by the debtor was gratuitous and the second transferee knew of the insolvency of the debtor at the time the debtor entered into the act in favour of the first transferee.

ARTICLE 236

A creditor who alleges the insolvency of his debtor has only to establish the amount of his debts. It is for the debtor to prove that his assets are equal to or exceed his liabilities.

ARTICLE 237

Once an act has been declared void the benefits that result from the cancellation, shall benefit all the creditors to whose prejudice the act was made.

ARTICLE 238

When a person acquires a right from an insolvent debtor, he may escape the consequence of an action by depositing the value equivalent to the alienated property to the Court’s Treasury.

ARTICLE 239

1. Fraud which consists solely of giving a creditor an unjustified preference over another creditor only entails the loss of that advantage by the creditor who has given the unjustified preference.
2. If an insolvent debtor pays off one of his creditors before the date originally fixed for payment, the payment is not valid as against the other creditors. Neither is a payment made after the date fixed for payment valid as against the other creditors if made as a result of a fraudulent arrangement between the debtor and the creditor so paid off.

ARTICLE 240

An action to set aside an act of alienation is prescribed after three years from the date on which the creditor has knowledge of the grounds for such an action. It is prescribed in any case after fifteen years from the date on which the contested alienation was effected.

ARTICLE 241

1. If a simulated contract has been drawn up, creditors of the contracting parties and particular successors in title may, if they are in good faith, avail themselves of the hidden contract and establish by any means the simulation of the contract by which they were prejudiced.
2. In the case of a conflict of interest between interested parties, some of whom rely upon the ostensible contract and others on the hidden contract, the former shall have preference.

ARTICLE 242

When the contracting parties hide a genuine contract behind an ostensible contract the genuine contract will bind the contracting parties and their universal successors in title.

SECTION TWO

THE RIGHT OF RETENTION

ARTICLE 243

1. A person who is under an obligation to supply something may refrain from performing his obligation as long as his creditor does not offer to perform an obligation incumbent on him arising out of the obligation of the debtor and connected therewith, or as long as the creditor does not supply adequate security to guarantee the performance of his obligation.
2. This right belongs especially to the possessor or holder of a thing, if he has incurred expenditure of a necessary or useful kind on the thing. The possessor or holder may, in such a case, refuse to return the thing until he has been repaid the amount due to him, unless the obligation of restitution results from an unlawful act.

ARTICLE 244

1. A mere right of retention does not imply a privilege upon the thing.
2. A person who retains the thing must preserve the thing in accordance with the rules as to pledge and must render an account of the fruits,
3. If the thing retained is of a perishable nature or susceptible of deterioration, the person who retains the thing may obtain from the Court authority for in sale in accordance with the provisions of Article 908. The right of retention will then be transferred to the price thereof.

ARTICLE 245

1. The right of retention is extinguished by the fact of the thing ceasing to be in the hands of the possessor or the holder,
2. A person retaining the thing, who has lost possession thereof without his knowledge or in spite of his opposition, may claim restitution of the thing, if he makes his claim within a period of thirty days from the time he became aware of the loss of possession, provided that one year has not elapsed since the date of loss.

THE BANKRUPT DEBTOR

ARTICLE 246

Interdiction may be imposed on the debtor whenever his due debts exceed in value of his patrimony.

ARTICLE 247

Upon request of the debtor or one of the creditors, interdiction shall be adjudicated by the judge of the first instance of the debtor. The case shall be examined summarily.

ARTICLE 248

The judge has, in every case before interdicting the debtor, to consider in his assessment all the debtor's surrounding circumstances, the extent of his responsibility for the causes that led to the request for interdiction, the lawful interests of his creditors and every other circumstance that may affect his financial status.

ARTICLE 249

An opposition may be filed against the decision taken on the petition within eight days, and can be taken appeal within fifteen days from the date it is rendered.

ARTICLE 250

1. On the day of entry of the interdiction case, the court clerk must record the contents of such case in a special register, the decision rendered in the case, and every other judgment confirming or cancelling the said decision on the same day the judgment is given.
2. The clerk shall also dispatch, to the appeal court, a copy of such registrations and endorsements, to be recorded in the General Register organized according to a decision to be issued by the Minister of justice and religious affairs.

ARTICLE 251

In case of change of domicile, the debtor has to inform of this change to the clerk of the court of his previous domicile. Upon taking knowledge of this change of domicile, whether informed by the debtor or advised by any other means, the clerk has to send a copy of the interdiction order, as well as of the information endorsed on the margin of the registration to the court in which jurisdiction falls to the new domicile, in order to record same in its registers.

ARTICLE 252

1. The ruling for a declaration of insolvency shall result to become due all the debts that the debtor owes in terms of deferred debts, and deducted from this debt the amount of the contractual or legal interest for the period that expired with the expiration of the term.
2. However, the judge may rule, upon a petition submitted by the debtor and in dealing with the interested parties among his creditors, to maintain or extend the term in relation to deferred debts. He may also grant the debtor a term in relation to the current debts, if he believes that this procedure is justified by circumstances, and that it is the best way to ensure the interests of the debtor and all creditors.

ARTICLE 253

1. The declaration of insolvency does not prevent the creditors from taking individual actions against the debtor.
2. However, it is not permissible to protest against creditors who have previous rights to register the insolvency case sheet with any jurisdiction that falls on the debtor's real estate after this registration.

ARTICLE 254

When the interdiction case is recorded, no action by the debtor shall apply to the creditors, which would diminish his rights or increase his obligations, as does not apply to their rights after that any fulfilment of the debtor.

ARTICLE 255

1. A creditor may dispose of his money, even without the creditors' consent, provided that is for the same price, and for the buyer to deposit the price in the court's treasury to be distributed according to the distribution procedures.
2. If the price for which the money was sold was less than the price of the same, then the disposition was not affect in the right of the creditors, unless the buyer deposited the difference in the price with which he bought what was reduced from the price of the same.

ARTICLE 256

If the creditors impose on the debtor's earnings in seizure, the head of the competent court for insolvency may decide to the debtor, based on a petition he submits, an expense to be collected from his seized revenues, A grievance may be made against the order issued on this petition within a period of three days from the date of its issuance if the grievance is from the debtor, and from the date of announcing the order to the creditors if the grievance is from them.

ARTICLE 257

The debtor shall be sanctioned according to the article 497 of penalty law in the following two instances:

1. If a case has been filed against him for a debt, and he intentionally has been declared bankrupt, to cause prejudice to his creditors and the case ended up by adjudicating the debt and the interdiction.
2. If he has concealed, after he has been condemned to interdiction, some of his possessions to prevent taking execution measures thereon; or has fabricated false or exaggerated debts, with the intention of causing prejudice to his creditors.

ARTICLE 258

1. Interdiction shall be removed by a court judgment, rendered by the judge of the debtor's domicile, upon application submitted by any interested person, in the following two instances:-

a. If it is established that the debts of the debtor have become less than his assets;

b. If the debtor settles his matured debts that did not mature because of the interdiction, and, in this case, the due dates of the debts shall be reinstated to their previous status provided that the debtor has paid all due instalments, according to the article 260.

2. The clerk of the court on his own initiative marks the end of the state of insolvency on the date of its issuance on the margin of the registration stipulated in the article 250, and he must send a copy of it to the clerks' office of the competent court of appeal for reference as well.

ARTICLE 259

Interdiction shall be terminated ipso jure after the lapse of five years from the date of endorsement declaration of insolvency.

ARTICLE 260

The debtor may, after the termination of interdiction, ask that the debts which were due because of interdiction and were not settled on their maturity date, return to their previous due dates, provided that he had settled his debts that became due for a reason other than interdiction.

ARTICLE 261

Termination of interdiction shall not prevent creditors from challenging the debtor's acts, or availing himself of using his rights in accordance with the articles from 232 to 240.

PART THREE

KINDS OF CONDITIONS MODIFYING THE EFFECTS OF OBLIGATIONS

CHAPTER ONE

CONDITIONAL OBLIGATIONS AND TIME CLAUSES

CONDITIONAL OBLIGATIONS

ARTICLE 262

An obligation is conditional when its existence depends on a future and uncertain event.

ARTICLE 263

1. An obligation is void when the condition upon which it depends is impossible, contrary to morality or to public order, and the condition is suspensive. If the condition is resolutely, the condition itself is deemed to be inexistent.
2. An obligation depending upon a resolutely condition contrary to morality or public order is however, void if the condition was the determining factor for undertaking the obligation.

ARTICLE 264

An obligation is void when it is subject to a suspensive condition by which the existence of the obligation depends solely on the will of the person who undertook the obligation.

ARTICLE 265

When an obligation depends on a suspensive condition it does not become executory until the condition is realized. Before realization of the condition such obligation is not subject to compulsory, or to voluntary performance, a creditor may however, take protective measures to safeguard his rights.

ARTICLE 266

1. An obligation is extinguished when the resolutely condition is realized. The creditor must restitute what he has received, if restitution is impossible by reason of a cause for which he is responsible he will be liable for damages.

2. Acts of management carried out by a creditor shall retain their validity notwithstanding the realization of the condition.

ARTICLE 267

1. The fulfilment of a condition, whether suspensive or resolutely, is effective retroactively to the day on which the obligation was contracted unless it appears from the will of the parties or by reason of the nature of the contract that the existence of the obligation or its extinction should take effect from the moment of the fulfilment of the condition.
2. In any case, the condition will not have retroactive effect if the execution of the obligation becomes impossible before the fulfilment of the condition on account of a cause independent of the debtor and for which he is not responsible.

ARTICLE 268

CHAPTER ONE

TIME CLAUSES

1. An obligation is for a term if its performance or extinction depends on a future certain event.
2. An event is considered to be certain if it must happen of necessity even if the time at which it should happen is unknown.

ARTICLE 269

When it results from the obligation that the debtor shall only perform the obligation when he is able to do, or when he has the means to do so. The Judge will fix a reasonable time for the term, taking into account the actual and future resources of the debtor and allowing for the diligence of a man anxious to perform his obligations.

ARTICLE 270

A debtor will forfeit the benefit of the term;

1. If he is declared bankrupt in accordance with the provisions of the law.

2. If he has, by his own act, apparently diminished the special security given to the creditor, even If this security was given by a subsequent act or by virtue of the law, unless the creditor prefers to demand additional security. If the reduction of the security is due to a cause for which the debtor is not responsible, he will forfeit his rights to the term unless he provides adequate security.
3. If he does not supply the creditor with the security promised in the contract.

ARTICLE 271

1. An obligation with a suspensive term only becomes due on the date of the expiration of the term. The creditor may, however even before the end of the term, take measures to protect his rights and may, in particular, ask for security if he fears that the debtor may become bankrupt or insolvent, and has reasonable ground for his fears.
2. At the end of a resolutely term the obligation is extinguished without such extinction having any retroactive effect.

CHAPTER TWO

PLURALITY OF OBJECTS OF AN OBLIGATION

ALTERNATIVE OBLIGATIONS

ARTICLE 272

An obligation is alternative when its object includes numerous prestations and the debtor as an entirely free by the performance of one of them, the option belong to the debtor, in the absence of any special provision in the law or an agreement by the parties to the contrary.

ARTICLE 273

1. If the option belongs to the debtor and he fails to elect, or if there are a number of debtors who do not agree amongst themselves, the creditor may apply to the Judge to fix a term for the debtor to elect or for several debtors to agree among themselves, failing which the judge will himself fix the object of the obligation.
2. If the option belongs to the creditor and he fails to elect, or if there are a number of creditors who do not agree amongst themselves, the option will pass to the debtor.

ARTICLE 274

If the option belongs to the debtor and then it became impossible to implement not one of the several prestations, included in the object of the obligation, he shall be bound to pay the value of the last of the prestations that became impossible to perform if he is responsible for the impossibility of performance even as regards only one of the prestations.

FACULTATIVE OBLIGATIONS

ARTICLE 275

1. An obligation is facultative when its object consists of one prestation only but the debtor may free himself of the obligation by the performance of another prestation in its place.
2. The object of the obligation is the prestation promised and not that prestation the performance of which frees the debtor, it is this object which determines the nature of the obligation.

CHAPTER THREE

PLURALITY OF PARTIES TO AN ABLIGATIONS

JOINT AND SEVERAL OBLIGATIONS

ARTICLE 276

Solidarity between creditors or debtors is not presumed. It is created by agreement or by provision of the law.

ARTICLE 277

1. When there is solidarity between creditors, the debtor may pay the debt to any one of them unless one of them objects to such payment.
2. Solidarity does not prevent the debt being divided between the heirs of one of the joint creditors unless the debt itself is indivisible.

ARTICLE 278

1. Joint creditors may take proceedings jointly against the debtor for the performance of the obligation; in so doing the conditions modifying the effect of the obligation as between each creditor and the debtor should be taken into account.

2. A debtor cannot, if he is sued for payment by one of his joint creditors, set up as a defence against that creditor defences that are personal as regards to the other creditors, but he may set up defences which are personal to the creditor suing him and those which are common to all the creditors.

ARTICLE 279

1. If a debtor is released of his debt to one of his joint creditors for a reason other than performance, he shall be released as regards the other creditors only up to the amount of the share of the creditor to whom he is no longer liable.
2. No one of the joint creditors may act in such a way as to prejudice the rights of the other creditors.

ARTICLE 280

1. All that by one of the joint creditors receive on account of the debt reverts to all the creditors and will be divided between them proportionally.
2. The division shall be made in equal parts if there is no agreement or provision of the law to the contrary.

ARTICLE 281

Where solidarity between the debtors, the payment of one of them, liberates all the others.

ARTICLE 282

1. A creditor may take action against his entire joint debtors jointly, in so doing, the conditions modifying the effect of the obligations as between the creditor and each of the co-debtors should be taken into account. If a creditor sues a debtor for performance, he shall not be prevented from suing other co-debtors.
2. A debtor who is sued by a creditor for performance cannot set up against that creditor defences that are personal to other co-debtors, but he may set up defences that are personal to himself as well as those common to all the co-debtors.

ARTICLE 283

Novation of a debt between the creditor and one of the joint debtors, releases other co-debtors unless the creditor has reserved his rights against them.

ARTICLE 284

A joint debtor cannot set up compensation with regard to that which a creditor owes to one of the other co-debtors except in respect of the share of such co-debtor.

ARTICLE 285

Merger that occurs in the person of a creditor and of one of the joint debtors does not extinguish the debt as regards the other co-debtors except to the extent of the merged share of the co-debtor.

ARTICLE 286

1. A release of debt granted by the creditor to one of the joint debtors does not release the other co-debtors unless the creditor expressly declares such to be the case.
2. In the absence of such a declaration the creditor may only claim from the other co-debtors the balance of the debt after deduction of the share of the co-debtor whom he has released, unless he has reserved his rights against them for the whole of the debt, in such a case the Joint debtors have a claim against the co-debtor who has been released for his share in the debt.

ARTICLE 287

If a creditor releases one of the Joint debtors from the Joint Liabilities his right to claim the whole of the debt from the other co-debtors remains unless otherwise agreed.

ARTICLE 288

1. In all cases of the release of one of the joint debtors either from the debt or from the joint and several liability, the other co-debtors may in accordance with Article 295 claim from the co-debtor who has been released his contribution in the share of those co-debtors who are insolvent.
2. If, however, the creditor has discharged the co-debtor to whom he has given a release from all liability in respect of the debt, the creditor will bear himself the contribution of such a co-debtor in the share of the insolvent co-debtors.

ARTICLE 289

1. If the debt is extinguished by prescription as regards one of the joint debtors the other co-debtors will only benefit from this prescription to the extent of the contribution of that co-debtor.
2. If the prescription is interrupted or suspended as regards one of the joint debtors, the creditor cannot claim interruption or suspension as regards the other co-debtors.

ARTICLE 290

1. In the performance of an obligation, a joint debtor is only responsible for his own acts.
2. A formal demand to one of the joint debtors or proceedings taken against one of them by the creditor will have no effect against the other co-debtors, but if one of the joint debtors issues a formal demand against the creditor, the other co-debtors will benefit from such demand.

ARTICLE 291

A reconciliation entered into between a creditor and one of the joint debtors and such reconciliation involves, discharge from the debt either directly or indirectly, the other debtors shall benefit from such discharge, however, where such reconciliation creates a new obligation or increases their existing obligations, it will be binding upon the other co-debtors, if they consent thereto.

ARTICLE 292

1. An acknowledgement of debt by one of the joint debtors does not bind the other co-debtors.
2. If one of the joint debtors refuse to take an oath or if he tenders the oath to the creditor and the creditor takes the oath, the oath refused or tendered will not prejudice the other co-debtors.
3. If the creditor tenders the oath to one of the joint debtors and this co-debtor takes the oath, the oath will benefit the other co-debtors.

ARTICLE 293

1. A judgement given against one of the joint debtors will have no effect against the other co-debtors.

2. If the judgement is given in favour of one of them, it will benefit the others, unless the judgement is based on a ground relating only to the co-debtor in favour of whom the judgement is rendered.

ARTICLE 294

1. If one of the Joint debtors pays the debt in full he will only have a claim against each of the other co-debtors for each of such co-debtors own share respectively, even if he exercises the right to action of the creditor by way of subrogation.
2. The amount paid is divisible between the co-debtors in equal parts in the absence of an agreement or a provision of law to the contrary.

ARTICLE 295

If one of the joint debtors becomes insolvent, his share shall be borne by the co-debtor who has effected payment and by all the other co-debtors to the extent of their shares.

ARTICLE 296

When the debt concerns only one of the joint debtors, he will be liable for the whole debt to the other co-debtors.

SECTION TWO

INDIVISIBILITY

ARTICLE 297

An obligation cannot be divided:

a. When it has for its object something which by its nature is not susceptible to division,
b. If it is the intention of the parties or it follows from the purpose pursued by the parties that the performance of the obligation should not be divided.

ARTICLE 298

1. When there are several debtors in respect of an indivisible obligation, each debtor is liable for the debt in full.
2. A debtor who has effected payment will have a remedy against each of the other co-debtors for his part, unless the contrary follows from the circumstances.

ARTICLE 299

1. When there are several creditors in respect of an indivisible obligation or several heirs of a creditor in respect of such an obligation, each of the creditors or heirs may demand the performance in its entirety of the indivisible obligation. If one of the creditors or the heirs contests such a demand, the debtor shall effect payment to all the creditors together or deposit the object of the obligation in Court.
2. Co-creditors will have remedies against a creditor who has received payment, each one for his share.

PART FOUR

TRANSMISSION OF AN OBLIGATION

CHAPTER ONE

THE ASSIGNMENT OF A RIGHT

ARTICLE 300

A creditor may assign his right to a third party unless there is a provision in the law or an agreement between the parties that prohibits such assignment, or on account of its nature. The assignment is valid without the consent of the debtor.

ARTICLE 301

A right can only be assigned to the extent to which it can be attached.

ARTICLE 302

An assignment is not effective as against a debtor or third party unless it has been accepted by the debtor or notified to him. The acceptance by the debtor does not render the assignment valid as against third parties unless it has an established date.

ARTICLE 303

The creditor to whom the assignment is made may, prior to notification of the assignment or to its acceptance, take all precautionary measures to safeguard the right that has been transferred to him.

ARTICLE 304

The assignment of a right comprises its warranties such as sureties, privileges and mortgages, as well as interest and instalments that have fallen due.

ARTICLE 305

1. In the case of an assignment for valuable consideration the assignor, in the absence of an agreement to the contrary, only warrants the existence of the right assigned at the moment of the assignment.
2. When however, the assignment is not for valuable consideration the assignor does not even warrant the existence of the right.

ARTICLE 306

1. An assignor does not warrant the solvency of the debtor unless such warranty is specifically stipulated.
2. If the assignor warrants the solvency of the debtor, this warrant does not expire except for the solvency at the time of the assignment, unless agreed otherwise.

ARTICLE 307

When assignee exercises his right of recourse in warranty against the assignor, in accordance with the two preceding Articles, the assignor is only liable to restitute that which he has received together with interest and expenses notwithstanding any agreement to the contrary,

ARTICLE 308

An assignor is responsible for his personal acts, even if the assignment is not for valuable consideration or even if it has been stipulated to be without warranty.

ARTICLE 309

A debtor of the right assigned may raise, as against the assignee, the defence that he was entitled to rise against the assignor at the time that the assignment became effective against him. He may also raise defences arising from the contract of assignment.

ARTICLE 310

In the event of multi-transfers of a single right, the transfer that first applies to third parties shall take precedence.

ARTICLE 311

1. In the event of any attachment against the obligor before the transfer becomes valid against third parties, the transfer shall, in respect of the attachment creditor, be considered as a second attachment.
2. In such event, where another attachment occurs after the transfer becomes effective against third parties, the debt shall be divided between the former attachment creditor, the transferee and the latter attachment creditor on a back-to-back basis, provided that the share of the latter attachment creditor shall be applied to complete the transferred right.

CHAPTER TWO

ASSIGNMENT OF DEBT

ARTICLE 312

In an assignment of debt is affected by an agreement between the debtor and a third party who undertakes to assume the debt in the place of the debtor.

ARTICLE 313

1. In the assignment of debt is not effective as against the creditor unless ratified by the creditor.
2. When the person assumes the debt or the original debtor notifies the assignment to the creditor and gives him a reasonable time to ratify the assignment, the assignment will be deemed to have been refused if the creditor does not give his consent before the expiration of such period.

ARTICLE 314

1. Until the creditor has signified his ratification or refusal of the assignment the person assuming the debt will, in the absence of an agreement to the contrary, be responsible to the original debtor is effect payment on due dare to the creditor. This rule applies even when the creditor has refused the assignment.

2. The original debtor cannot, however, call upon the person assuming the debt to make payment to the creditor as long as he has not himself discharged his obligation to the person assuming the debt in accordance with the contract of assignment.

ARTICLE 315

1. The debt assigned is transmitted with all its warranties.
2. However the guarantor, whether real or personal, does not remain bound to the creditor unless he has agreed to the assignment.

ARTICLE 316

In the absence of an agreement to the contrary the original debtor warrants the solvency of the person assuming the debt at the moment the creditor ratifies the assignment.

ARTICLE 317

A person assuming debt may raise against the creditor the defence which the original debtor was entitled to raise. He may also raise the defences arising out of the contract of assignment.

ARTICLE 318

1. An assignment of debt may also take place between the creditor and the person assuming the debt by an agreement provides that such person replaces the original debtor in this obligation.
2. In such a case the provisions of articles 315 and 317, will be applicable.

ARTICLE 319

1. The sale of a mortgaged immovable property does not imply the transfer of the mortgage debt to the purchaser unless the agreement provides for such a transfer.
2. If the vendor and the purchaser agree to assign the debt and if the deed of sale is transcribed the creditor should, after notification to him by legal process of the assignment, ratify or refuse the assignment within a period not exceeding six months. If he maintains silence up to the end of this period such silence is equivalent to ratification.

CHAPTER FIVE

THE EXTINCTION OF OBLIGATIONS

CHAPTER ONE

PAYMENT

THE TWO PARTIES TO PAYMENT

ARTICLE 320

1. Payment may be made by the debtor, by his representative or by any other interested party, subject to the provisions of Article 205.
2. Payment may also, be made by a third party who is not interested in such payment, even without the knowledge or against the wish of the debtor, but the creditor may refuse payment tendered by a third party if it is opposed by the debtor and the debtor has informed the creditor of his opposition.

ARTICLE 321

1. Where a third party pays a debt, such third party may have recourse against the debtor to reimburse the amount paid.
2. However, where a payment is made against the will of the debtor, the debtor may then prevent recourse by the payer in connection with the amount paid, in full or in part, if the debtor proves that it has an interest in objecting to such payment.

ARTICLE 322

1. Payment is only valid if the person who made the payment is the owner of that with which he has paid the obligation and has the capacity of disposing of it.
2. When payment of that which is due is made by a person without the necessary legal capacity to dispose of the thing with which payment is effected it extinguishes the obligation provided that it does not prejudice the person who has paid.

ARTICLE 323

Where a person other than the debtor makes payment, the payer shall substitute the creditor who collected its right in any of the following cases:

a. Where the payer is obliged to pay the debt with or on behalf of the debtor;
b. Where the payer is a creditor and pays another creditor having preference to such creditor due to any security in kind, even if the payer holds no security;

c. Where the payer holds a thing and pays the debt to a creditor who had held such thing to secure its right;
d. Where a special provision grants the right of subrogation to the payer.

ARTICLE 324

A creditor who receives what is due to him from a third party may, agree with the third party, subrogate such third party into his rights even if the debtor does not agree to the subrogation, this agreement must not be late at the time of payment.

ARTICLE 325

A debtor may also, when he has borrowed a sum with which he has paid the debt, subrogate the lender into the rights of the creditor who received the payment, even without the consent of the creditor, provided that in the contract of loan that has a fixed date, it is stated that the sum in question was borrowed for the purpose of Effecting the payment and that in the receipt in discharge, it is stated that the payment was made with the money lent by the new creditor. The original creditor may not refuse including such statement.

ARTICLE 326

A third party subrogated in law or by agreement in the rights of the creditor, is substituted for the creditor as regards the debt to the amount of the sums that he has himself paid with all the attributable accessories, securities and defences attached to the debt . Such subrogation shall be to the extent of the payment made by the person replacing the creditor.

ARTICLE 327

1. In the absence of an agreement to the contrary, when a third party pays part of a debt to a creditor and is subrogated into the rights of the creditor as regards such part, the creditor shall not be prejudiced by such partial payment and may exercise his rights for that which remains due, in preference to the third party.
2. When a further third party subrogated in the rights of the creditor, as regards which remains due to this creditor, this further third party so subrogated, together with the

third party subrogated before him, will have a right to claim what is due to each of them pro rata.

ARTICLE 328

A possessor of mortgaged property, who has paid all the mortgage debt and has been subrogated into the rights of the creditors, shall only have the right by reason of such subrogation to claim from the holder in the debt proportional to the value of the immovable held by him.

ARTICLE 329

Payment shall be made to the creditor or to his representative. A person who produces to the debtor a receipt in discharge issued by the creditor is deemed to be qualified to receive payment unless it has been agreed that payment shall be made to the creditor in person.

ARTICLE 330

Payment to someone other than the creditor or his representative does not free the debtor of his obligation unless the payment is ratified by the creditor, or profits the creditor and then only to the extent of such profit, or unless the payment was made in good faith to a person holding the title to the debt.

ARTICLE 331

When a creditor refuses, without good reason, to accept payment that is regularly offered to him, or to do such things without which payment cannot be made, or declares that he will not accept payment, he will be deemed to have been duly summoned to accept payment from the time that such refusal is recorded by summons notified to him by legal process.

ARTICLE 332

From the time that a summons has been served on a creditor he shall be responsible for the loss or the deterioration of the thing and interest on the debt ceases to run; the debtor shall then have the right to place the thing in safe keeping at the cost of the creditor and claim compensation for any damages he may have suffered.

ARTICLE 333

When the subject matter of the payment is a definite and specific thing which must be delivered at the place where it is situated, the debtor may, after having summoned the creditor to take delivery, obtain an order of the Court to place it in safe keeping. If the thing in question is an immovable or a thing intended to remain in place, the debtor may ask for it to be placed under judicial custody.

ARTICLE 334

1. The debtor may, by permission of the Court, sell, by public auction, things of a rapidly perishing nature or movables that necessitate an exorbitant expenditure for safekeeping or custody, and deposit the price in the Court Treasury.
2. When the thing has a known price on the market or is quoted on the stock exchange, it may only be sold by public auction if it is impossible to sell it by agreement at the market or quoted price.

ARTICLE 335

Payment shall also be deemed made if the debtor deposits the debt directly or takes any step in lieu of such deposit, in any of the following cases; where the debtor is not aware of the identity and domicile of the creditor; where the creditor is incapacitated and has no representative to accept such payment on behalf of such creditor; where the debt is disputed; or where there are serious grounds that make it difficult to make a real offer of the debt prior to the deposit or alternative procedure.

ARTICLE 336

The actual tender of the thing due is equivalent to payment, in as far as the debtor is concerned, when it is followed by a deposit made in the manner prescribed in the Civil law, or by any other equivalent measure, provided that it is accepted by the creditor or recognised as valid by a final judgement.

ARTICLE 337

1. A debtor, who has made a tender of the debt followed by a deposit, or by an equivalent measure, may retract his tender as long as it has not been accepted by the creditor, or as long as it has not been recognised a valid by a final judgement, in which case the co-debtor and sureties will not be freed.
2. If a debtor retracts his tender after its acceptance by the creditor or after it has been declared valid by a judgement and his withdrawal is accepted by the creditor, the creditor shall no longer have the right, to avail himself of the securities guaranteeing his right, and the co-debtors and the sureties shall in such case be released.

MEANS OF PAYMENT

ARTICLE 338

Payment must be made with the very thing due. The creditor cannot be forced to accept anything else, even if the value of such other thing is equal or greater.

ARTICLE 339

1. In the absence of an agreement or a legal provision to the contrary, the debtor cannot force his creditor to accept a partial payment of his debt.
2. If, in a case where part of the debt is contested, a creditor agrees to receive payment of that part of his claim which is admitted, the debtor cannot refuse to pay the part that is admitted.

ARTICLE 340

When a debtor is under an obligation to pay expenses together with a compensation for delay in payment, and makes a payment that does not cover the principal and all these accessories, the payment shall, unless otherwise agreed, be imputed in the first instance to expenses, then compensation for delay in payment, then to the principal.

ARTICLE 341

If a debtor owes the same creditor several debts of the same kind and if the payment made by him does not suffice to cover all the debts, he has the right to indicate, when effecting payment, the debt which he intends to discharge, provided that he is not prevented from so doing by law or by agreement.

ARTICLE 342

Failing any indication by the debtor as provided for in the preceding Article, the payment shall be imputed to the debt that has fallen due; in case where several have fallen due, to the most onerous debt; in case where the debts are equally onerous to the debt indicated by the creditor.

ARTICLE 343

1. In the absence of an agreement or of a provision of the law to the contrary, payment must be made as soon as the obligation has been created as a liability of the debtor.
2. However, the judge may in exceptional cases and in the absence of a provision of the law barring him to the contrary, consider granting to the debtor, when his position so requires, one or more reasonable delays for the performance of his obligation or allow payment by instalments, provided that no serious prejudice is thereby caused to the creditor.

ARTICLE 344

1. In the absence of an agreement or a provision of the law to the contrary, when the subject matter of the obligation is a definite and ascertained thing, it should be delivered at the place it was situated at the time the obligation was created.
2. In the case of other obligations, payment is due at the debtor's domicile at the time of payment or at his place of business if the obligation is considered with such business.

ARTICLE 345

In the absence of an agreement or a provision of the law to the contrary, expenses in connection with payment are at the charge of the debtor.

ARTICLE 346

1. A person who pays part of a debt has the right to demand a receipt for the amount he has paid and a note showing the payment on the document of title of the debt. He has also the right; at the time the debt is paid in full, to demand the restitution or the cancellation of the document of title. If this document has been lost, the debtor may demand a written declaration from the creditor that the document of title has been lost.

2. If the creditor refuses to comply with the conditions laid down in the preceding paragraph, the debtor may place the object due in judicial custody according to the law.

CHAPTER TWO

METHODS OF EXTINCTION OF THE OBLIGATION EQUIVALENT TO PERFORMANCE

GIVING IN PAYMENT

ARTICLE 347

Where the creditor accepts payment by a thing other than the thing receivable by the agreement, such payment shall be a valid discharge.

ARTICLE 348

The provisions of the law relating to sale, especially those which relate to the legal capacity of the parties, warranty against eviction and hidden defects, apply to giving in payment in cases where it transfers the ownership of the thing given in place of the prestation due, the provisions of the law relating to payment, especially those which relate to the legal capacity of the contracting parties and to the extinction of warranties, are also applicable in so far as the giving in payment extinguishes the debt.

NOVATION AND DELEGATION

ARTICLE 349

There is novation of an obligation:

1. By a change of the debt when the two parties agree to substitute a new obligation for the original obligation, which new obligation differs from the original obligation regards its object or as regards its source.
2. By a change of the debtor, when a creditor and a third party agree that such third party shall take the place of the original debtor and that the original debtor shall be released of the debt without his consent being necessary, or when the debtor has a procured the consent of the creditor to substitute the debtor by a third party who consents to be the new debtor.

3. By a change of the creditor, when the creditor, the debtor and a third party agree that his third party shall be the new creditor.

ARTICLE 350

1. Novation can be affected if the two obligations, the original and the new obligation are free from any grounds of nullity.
2. If the original obligation results from a voidable contract, the novation is only valid if the new obligation has been assumed both with a view to confirming the contract and to replacing the original obligation.

ARTICLE 351

1. Novation is not presumed, it must be expressly agreed, or extract clearly from the circumstances.
2. In particular, novation does not result in the absence of an agreement to the contrary, from the subscription of a promissory note in respect of pre-existing debt, from changes that relate only to the date, place or mode of performance of prestation, or from modifications made to the obligation only as regards securities unless there is agreement to the contrary.

ARTICLE 352

1. The mere entry of the debt in a current account does not affect novation.
2. There is, however, novation when the balance of a current account has been fixed and agreed; if, however, the debt was guaranteed by means of special security, that security is maintained unless otherwise agreed.

ARTICLE 353

1. Novation has the effect of extinguishing the original obligation with its accessories and of substituting for it, a new obligation.
2. Securities which guaranteed the performance of the original obligation are not transferred to the new obligation, unless the law provides otherwise, or unless it appears from the agreement or the circumstances of the case that such is the intention of the parties.

ARTICLE 354

1. If the debtor has given real securities in guarantee of the original obligation, the following conditions will be observed in the agreement providing for the transfer of these securities to the new obligation:

a. When the novation results from a change of the debt, the creditor and the debtor may agree that the securities shall be transferred to the new obligation.

b. When the novation results from a change of the debtor, the creditor and the new debtor may agree, without the consent of the original debtor that the real securities shall be maintained;

c. When the novation results from the change of the creditor, the contracting parties may agree that the securities shall be maintained.

2. In all cases, the agreement providing for the transfer of the real securities cannot be effective against third parties, unless it is made at the same time as the novation to the extent that it does not prejudice third parties, and the provisions as to the registration of real rights are complied with.

ARTICLE 355

Real and personal as well as joint and several surety ships is only transferred to the new obligation with the consent of the sureties and of the joint and several co-debtors.

DELEGATION AND PAYMENT

ARTICLE 356

1. There is delegation when a debtor procures the acceptance by his creditor of a third party who undertakes to pay in his stead.
2. Delegation does not necessarily infer the existence of a previous debt between the debtor and such third party.

ARTICLE 357

1. When, in a case of delegation, the contracting parties agree to substitute a new obligation for the original obligation, such a delegation constitutes a novation by the change of the debtor.

It results in the liberation of the original debtor from the obligation to his creditor provided that the new obligation assumed by the new debtor is valid and that such new debtor is not insolvent at the time of the delegation.

2. Novation is not assumed in a case of delegation; in the absence of an agreement providing for novation, the original obligation continues concurrently with the new obligation.

ARTICLE 358

In the absence of an agreement to the contrary, the obligation of the new debtor towards the creditor is valid even if his obligation towards the original debtor is void or liable to be contested, subject to the new debtor's right of recourse against the original debtor.

COMPENSATION (SET-OFF)

ARTICLE 359

1. A debtor has a right to a set-off of that which he owes to his creditor against that which such creditor owes to him, even when the causes giving rise to the two debts are different, provided that they are both for a sum of money or fungibles of similar nature and quality, that they are not in dispute and that they are due and may be sued for.
2. Postponement of payment by reason of delay granted by the Judge or by the creditor does not prevent a set-off.

ARTICLE 360

A debtor may avail himself of set-off even when the places of payment of the two debts are different, but he must, in such a case, make good any loss caused to the creditor by reason of the fact that the creditor was not able, as result of the compensation, to obtain or to perform the prestation at the place fixed for this purpose.

ARTICLE 361

A set-off takes place, whatever may be the sources of the debts, except in the following cases:

a. Where one of the two obligations consists of a thing of which the owner has been unjustly deprived, and the object of a claim for restitution;
b. Where one of the two debts consists of a thing that has been deposited or lent for use or is the object of a cclaim for restitution.
c. Where one of the two debts is a right which is not liable to attachment.

ARTICLE 362

1. Set-off only takes place when set up by the interested party. Set-off cannot be renounced before the right thereto has come into existence.
2. Set-off extinguishes the two debts to the extent of the amount of the smaller debt, from the moment they become subject to set-off. Imputation of the amount discharged in set-off takes place in the same way as in ordinary payment.

ARTICLE 363

If the delay for prescription of a debt has expired when set-off is set up, set-off will nevertheless still take place if the delay for prescription has not expired when set-off became possible.

ARTICLE 364

1. Set-off cannot take place to the detriment of rights acquired by third parties.
2. If, after the seizure by a third party of the property held by the debtor for his creditor, such debtor becomes the creditor of his creditor, he cannot set up set-off to the prejudice of the attaching creditor.

ARTICLE 365

1. When a creditor has assigned his debt to a third party, the debtor who has consented to the assignment without reserve, cannot set up set-off against the assignee, which he had the right to set up before he consented to the assignment; he can only enforce his claim against the assignor.
2. But a debtor, who has not accepted an assignment which has been notified to him, may, notwithstanding the assignment, set up compensation.

ARTICLE 366

A debtor who had the right to set up set-off but who nevertheless paid his debt cannot avail himself, to the prejudice of third parties, of the securities guaranteeing his right unless he did not know of the existence of his right.

MERGER

ARTICLE 367

1. When the qualities of creditor and debtor in the same debt are united in the same person, the debt is extinguished to the extent of the merger.
2. When the cause which gave rise to the merger disappears and its disappearance is retroactive, the debt revives with its accessories as regards all interested parties and the merger is deemed never to have existed.

CHAPTER THREE

THE EXTINCTION OF OBLIGATIONS WITHOUT PAYMENT

SECTION ONE

RELEASE OF THE OBLIGATIONS

ARTICLE 368

Obligations are extinguished by a voluntary release of a debtor by his creditor. The release is completed as soon as it comes to the knowledge of the debtor, but becomes void if refused by him.

ARTICLE 369

1. The release of an obligation is subject to the basic rules that govern gifts.
2. No special form is required for release even if it is the release of an obligation whose existence was conditional upon a special form required by law or by the agreement entered into by the parties.

SECTION TWO

IMPOSSIBILITY OF PERFORMANCE

ARTICLE 370

An obligation is extinguished if the debtor establishes that its performance has become impossible by reason of causes beyond his control.

SECTION THREE

EXTINCTIVE PRESCRIPTION

ARTICLE 371

The term of prescription for personal obligations is five years with the exception of those cases for which a special provision is contained in the law and with the exception also of the following cases.

ARTICLE 372

1. Unless there is a provision in the law to the contrary, the term of prescription for sums payable periodically at recurring intervals such as the rent of buildings and of agricultural land, salaries, wages and pensions, is five years, where the debt is not admitted by the debtor.
2. The term of prescription for revenue due by a holder in bad faith and for revenue due by a custodian of awqaf to the beneficiaries is fifteen years.

ARTICLE 373

The term of prescription for sums due to physicians, chemists, lawyers, experts, and receivers in bankruptcy, brokers, professors or teachers is three years, provided that the debts are due as remuneration for work coming within the scope of their professional work or in payment of expenses incurred by them.

ARTICLE 374

1. The term of prescription for taxes and dues owing to the State is three years. The term of prescription for taxes and annual dues commences to run from the end of the year for which they were due: that for fees for legal documents from the date of termination of the hearing of the case in respect of which such documents were prepared, or, if no hearing takes place, from the drawing up of such documents.
2. The term of prescription of the right to claim repayment of taxes and dues unduly paid is also, three years; this prescription runs from the date of payment.
3. The preceding provisions shall not prejudice the provisions set forth in special laws.

ARTICLE 375

1. The term of prescription is one year for the following rights of action:

a. The rights of action of merchants and manufacturers in respect of things supplied to persons who do not trade in these articles, as well as the rights of action of hotel and restaurant proprietors for the cost of accommodation and food and for expenses incurred by them on behalf of the clients.

b. The rights of action of domestic servants and similar persons. The rights of home servants and the like, including daily and other wages and the cost of their supplies and services to their masters.

2. When a person invokes the non-admission of the law-suit indicated in the preceding paragraph, he must take the oath that he has actually paid the debt. If he is an heir of the debtor or a legal representative thereof or of his heirs, he shall take the oath that he does not know of the existence of the debt nor is he aware of his death. Then, the Court will of its own accord pass the oath.

ARTICLE 376

1. The term of prescription in respect of rights referred to in Articles 373 and 375 runs from the time that the prestations were made by the creditors, even when the creditors continue to make further prestations.
2. Once any of these rights has been established by a written document, it is only prescribed after fifteen years.

ARTICLE 377

Periods of prescription are calculated in days, not in hours; the first day does not count and prescription is completed when the last day is at an end.

ARTICLE 378

1. The period of prescription shall not commence until the maturity date of the debt, unless the law provides otherwise.
2. In particular, such period shall not apply to a debt based on a suspensive condition other than from the time when such condition is met; and in respect of the security to maturity, from the date on which maturity is established; and in respect of a deferred debt, from the time when such period expires.

3. Where the determination of the date for payment is at the sole discretion of the creditor, the period of prescription shall commence from the date when the creditor is able to exercise such discretion.

ARTICLE 379

1. Prescription does not run whenever there is a bar, even a moral one, which prevents the creditor from claiming his right. It does not run between principal and his representative.
2. Prescription does not run as regards a creditor who is legally incapable, absent or convicted criminal if he is not legally represented.

ARTICLE 380

Prescription is interrupted by legal proceedings, even if instituted in a Court without jurisdiction, by a summons or by an attachment, by the application of a creditor for the admission of his claim in a bankruptcy or in a distribution, or by any act of a creditor to claim his right in the course of legal proceedings.

ARTICLE 381

1. The period of prescription shall be suspended if the debtor expressly or impliedly acknowledges the right of the creditor.
2. A debtor who leaves a pledge in the hands of his creditor as security for his debt is deemed to have tacitly acknowledged the debt.

ARTICLE 382

1. When prescription is interrupted, a new prescription commences to run from the time that the effect of the act that gave rise to the Interruption has ceased. The term of the new prescription will be of the same duration as that of the former one.
2. When the debt has been confirmed by a final Judgment or when, in the case of a debt prescribed after one year, the prescription has been interrupted by the admission of the debtor, the term of the new prescription will be fifteen years unless the debt confirmed by the judgment involves periodical recurring obligations which will not become due until after the judgment.

ARTICLE 383

1. Prescription extinguishes the obligation but leaves a natural obligation upon the debtor.
2. When a right is extinguished by prescription, interest and other accessories to the debt are also extinguished even if the term of the particular prescription applying to these accessories has not expired.

ARTICLE 384

1. The Court of its own initiative cannot invoke prescription. Prescription must be invoked by the debtor, or by his creditors, or by any interested party, even if the debtor has failed to do so.
2. Prescription may be invoked at any stage of the proceedings, even before the Court of Appeal.

ARTICLE 385

1. A debtor cannot renounce the benefit of prescription before he has acquired the right to invoke it, nor can he agree to a term of prescription other than that fixed by law.
2. A person, however, who is legally capable of disposing of his rights, may renounce, even tacitly, a right to prescription which he is in a position to invoke, but a renunciation made to the detriment of his creditors will have no effect against them.

PART SIX

PROOF OF OBLIGATION

ARTICLE 386

The burden of proving an obligation lies on the creditor and that of proving a release on the debtor.

CHAPTER ONE

AN AUTHENTIC DOCUMENT

ARTICLE 387

1. An authentic document is a document in which a public officer or a person entrusted with the performance of a public service records, in the manner prescribed by law and with the Limits of his power, and competence, fact, that have

taken place in his presence or statements that have been made to him by the parties.

2. If the document does not fulfil the requirement, of authenticity, it is valid as a signed document, provided that it bears the signatures, the seals, or the fingerprint, of the parties. It is necessary to prove the authenticity of fingerprint, that they should be affixed in the presence of two witnesses who shall sign the document.

ARTICLE 388

An authentic document, unless it is legally established to be a forgery, has probative force erga omnes, as regards matters therein recorded in respect of acts performed within the limits of his duties by the official who drew up the document, or in respect of matters performed by the parties in his presence.

ARTICLE 389

1. When the original of an authentic document exists, official handwritten, or photo copies thereof have probative force as far as they conform to the original.
2. A copy is deemed to conform to the original, unless its accuracy is contested by one of the parties; in which case the copy will be checked with the original.

ARTICLE 390

When the original of an authentic document does not exist, the copy has probative force in accordance with the following provisions:

a. the first authentic copy, whether bearing the executory formula or not, has the same probative force as the original when its outward appearance does not give rise to any doubt that it does not conform to the original;
b. the same validity is accorded to official copies of the first authentic copy, but each of the parties may demand that such copies be checked with the original authentic copy from which they were taken;
c. Official copies taken from the first authentic copy may, in accordance with the circumstances of the case be regarded as merely informatory.

ARTICLE 391

A signed document is deemed to emanate from the person who signed it, unless he formally contests the writing, the signature or the figure print alleged to be his, heirs or successors in title are not bound to contest, but may only declare on oath that they don't know, that the writing or the signature or the figure prints are those of their author.

ARTICLE 392

1. A signed document has no probative force as to its date as regards third parties until it has acquired an established date. A document acquires an established date (date certaine):

a. from the day that it is inscribed in the register maintained for the purpose:
b. from the day that its contents are mentioned in another document whose date is established;
c. from the day that a visa is affixed to the document by a competent public official;
d. from the day of the death of one of those whose admitted handwriting, signature, or fingerprint it bears, or from the day on which it has become impossible for any of them, as a result of incapacity, to write or to affix his fingerprint from the day of the establishing of existence of the document.

2. The Judge may, however, upon taking into account the circumstances, refuse to apply the provisions of this article as regards discharges.

ARTICLE 393

1. Signed correspondence has the same probative force as signed documents.
2. The same probative force will apply to telegrams if the original, left at the office of despatch, is signed by the sender; a telegram is presumed to be a true copy of the original until the contrary is proved.
3. If the original of the telegram is destroyed, the telegram will be regarded as merely informatory.

ARTICLE 394

1. Commercial books are not to be taken as proof against persons who are not traders. When, however, these books contain particulars as to supplies made by traders the Judge may, on the basis of these particulars and within the limits within which evidence by witnesses is admitted, call upon one or other of the parties to take the suppletory oath.
2. Commercial books have probative force against merchants. If these books are regularly kept the person who wishes to rely upon them for proof will not be allowed to use part of their contents and set aside that part of their contents that is contrary to his contention.

ARTICLE 395

Ledgers and private papers have no probative force against the person from whom they emanate, except in the two following cases;

a. when such a person states therein formally that he has been repaid a debt;
b. When such a person states formally his intention that the contents of these papers shall take the place of a title in favour of a person for whom the entries establish a right.

ARTICLE 396

1. An endorsement of discharge, entered on the title-deed of a debt, even though such endorsement is not signed by the creditor, constitutes a proof against the creditor as long as the title-deed of debt has never been out of his possession, unless he furnishes proof to the contrary.
2. An endorsement implying discharge, made in the handwriting of the creditor on the duplicate copy of the title-deed of a debt, or on a receipt in discharge in the hands of the debtor, also constitutes a proof against the creditor even if not signed by him.

CHAPTER TWO

EVIDENCE BY WITNESSES

ARTICLE 397

1. In the absence of agreement or of a provision of the law to the contrary, commercial matter also excepted, evidence as to the existence of the act or as to its extinction cannot be given by witnesses where the value involve exceeds five hundred Somali shilling, or is not fixed.
2. The value of an obligation will be assessed as at the date on which the act has been concluded, the evidence of witnesses is, however, admitted if the value of the obligation exceeds five hundred Somali shilling, only as a result of the addition of the capital of the interest and other accessory charges.
3. If the proceeding involve several claims arising from a number of sources, the evidence of witnesses will be permitted in respect of each of the claims, whose value does not exceed five hundred Somali shilling, although the total value of the claims exceeds five hundred Somali shilling, and although they arise from dealings, between the same parties or from transactions of the same nature. This rule also applies to all payments not exceeding five hundred Somali shilling.

ARTICLE 398

Evidence by witnesses is not admitted even if the value does not exceed five hundred shilling Somali;

a. When it is required to disprove or to go beyond the contents of a written document.
b. if the object of the claim consists of the balance of or part of a right which can only be proved by documentary evidence,
c. If one of the parties to the proceedings, having made a claim exceeding five hundred Somali shillings, reduces his claim to an amount not exceeding that sum.

ARTICLE 399

1. When documentary evidence is required, evidence by witnesses may be allowed when there is a commencement of proof in writing.

2. Any written document, emanating from the party against whom the claim is made, tending to make the existence of the alleged act probable, is deemed to be a commencement of proof in writing.

ARTICLE 400

Evidence by witness, is not admissible in the place of documentary evidence:

a. When documentary evidence cannot be obtained as a result of a material or moral bar.
b. When the creditor has lost his written title to the claim as a result of a cause beyond his control.

CHAPTER THREE

PRESUMPTIONS

ARTICLE 401

A presumption of law relieves the party in whose favour the presumption exists of the necessity of producing other evidence. This presumption of law, however, may be rebutted by evidence to the contrary, unless the law provides otherwise.

ARTICLE 402

1. Final Judgments are absolute proof of the right established by such Judgments, and no proof is admitted against the legal presumption resulting there from, provided that such Judgments refer to rights between the same parties acting in the same capacity or their heirs and successors and having the same object and the same consideration.
2. This presumption cannot be raised by the court of its own Initiative.

ARTICLE 403

A penal decision only binds a Judge in a civil suit as regards the facts on which the Penal Court gave its decision and upon which the Penal Court had necessarily to pronounce Judgment.

ARTICLE 404

Presumptions which are not provided for in law are left to the appreciation of the Judge. Proof by means of these presumptions should only be admitted in cases in which the law allows evidence by witnesses.

CHAPTER FOUR

ADMISSIONS

ARTICLE 405

An admission is an acknowledgement made before the Court of a fact by a party against whom this fact has been alleged and in the course of the proceedings relating to such a fact.

ARTICLE 406

1. An admission is conclusive proof against him who makes it,
2. The acknowledgment cannot be partial to its owner, unless it is focused on multiple incidents and the existence of one of them does not necessarily necessitate the existence of another incident.

CHAPTER FIVE

THE OATH

ARTICLE 407

1. Each of the litigants may tender the decisive oath to the other opponent, provided that the judge may prevent the oath from being directed if the opponent was arbitrarily directed.
2. The party to whom the oath is tendered may tender it back to the other party; nevertheless, the oath may not be tendered back if it relates to a matter in which the two contending parties did not participate but is solely personal to him to whom the oath is tendered.

ARTICLE 408

1. The decisive oath cannot be tendered in respect of a fact contrary to public order.

The fact which is the object of the oath must relate to the individual to whom the oath is tendered; if the fact does not so relate the oath is valid only insofar as he has knowledge of it.

2. The decisive oath may be tendered at any stage of the proceedings.

ARTICLE 409

A party who has tendered or who has tendered back the oath cannot retract once the other party has agreed to take the oath.

ARTICLE 410

When the oath tendered or tendered back has been taken, the other party is not entitled to prove that the oath is false, when, however, such an oath is established to be false by a decision of a penal court, the party damaged as a result of the false oath may claim compensation without prejudice to his right of recourse against the judgement rendered against him.

ARTICLE 411

The party to whom the oath is tendered and who has refused it without tendering it back to the other party to whom the oath has been tendered back and who has refused to take it, will lose his case.

ARTICLE 412

1. The judge may, on his own initiative, tender the suppletory oath to either party with a view to deciding on the merits of the claim or on the amount of his award.
2. It's required to be tendered the oath only when the claim is neither completely proved, nor without any proof.

ARTICLE 413

The party to whom the Judge has tendered the suppletory oath cannot tender back the oath to the other party.

ARTICLE 414

1. The Judge may only tender the auppletoty oath to the plaintiff as regards the amount of the claim when it is impossible to fix the amount in any other way.

2. The Judge, even in this case, will fix a maximum amount up to which the plaintiff should be believed on his oath.

BOOK TWO

SPECIFIC CONTRACTS

PART I

CONTRACTS AS REGARDS OWNERSHIP

CHAPTER ONE

SALE

SECTION ONE

SALE IN GENERAL

ARTICLE 415

Sale is a contract whereby the vendor binds himself to transfer to the purchaser the ownership of a thing or any other propriety right in consideration of a price in money.

ARTICLE 416

1. The purchaser must have a sufficient acquaintance with the thing sold, this acquaintance will be deemed sufficient if the contract contains the description of the thing sold and its essential qualities, so that it may be identified.
2. The statement in a deed of sale that the purchaser is acquainted with the thing deprives him of the right to claim annulment of the sale on the ground of want of acquaintance with the thing, unless he proves fraud on the part of the vendor.

ARTICLE 417

1. When the sale is made according to sample, the thing sold should conform to the sample.
2. If the sample deteriorates or perishes while in custody of one of the contracting parties, even if it was not his fault, it is incumbent upon that party, whether he is vendor or buyer to establish that the thing is or is not in conformity with the sample.

ARTICLE 418

1. In sales by trial, the seller shall enable the purchaser to try an item and the purchaser may accept or reject it. Where the purchaser rejects the sale item, he shall notify the seller of such rejection within an agreed time period, or within such reasonable time period as the seller determines. Expiry of such period without the purchaser's notification shall be deemed acceptance of the sale item.
2. A sale by trial shall be conditional upon the acceptance of the sale item by the purchaser, unless the agreement or the circumstances indicate that the sale is based on a rescissible condition.

ARTICLE 419

1. Where the sale of a thing is subject to the condition of tasting, the purchaser may accept the sale at his sole discretion.
2. However, the purchaser shall notify the seller of his acceptance within such period as provided by agreement or practice, and the sale shall be effective only from the time of such notification.

ARTICLE 420

1. The sale price shall be determined only on the basis of appropriate means used to assess such price.
2. Where the parties agree that the price shall be the market price, such price shall be the market price at the time and place of delivery of the sale item to the purchaser. Where no market is available, the market price shall be that prevailing in the place whose prices are applicable in accordance with practice, unless otherwise agreed.

ARTICLE 421

Where the sale price is not expressed in the contract, the sale shall not be invalid if the agreement or circumstances indicate that the contracting parties intended to apply either the trading price between them or the market price.

ARTICLE 422

1. When an immovable belonging to a person who is legally incapable has been sold with a -lesion", of more than one-fifth of its value, the vendor will have a right of action with a view to make up the price to four- fifths of the normal price.

2. In order to ascertain whether the lesion was of more than one-fifth, the value of the immovable at the time of the sale should be ascertained.

ARTICLE 423

1. The right to bring an action for a supplement of price on the ground of lesion is prescribed within three years from the time the legal incapacity ceases, or from the date of the death of the owner of the immovable sold.
2. Such proceedings do not operate to the prejudice of third parties in good faith who have acquired a real right on the immovable sold.

ARTICLE 424

This action supplement of price on the grounds of lesion does not lie in respect of sales by public auction conducted in accordance with the provisions of this law.

OBLIGATIONS OF THE VENDOR

ARTICLE 425

The vendor is bound to perform everything necessary to transfer the right to the thing sold to the purchaser, and to abstain from all acts that might render this transfer impossible or difficult.

ARTICLE 426

When goods are sold in bulk, ownership is transferred to the purchaser in the same way as ownership of a definite and ascertained thing. There is sale of goods in bulk even when the amount of the price depends on the extent weight, or measure of the goods sold being ascertained.

ARTICLE 427

1. In a credit sale the vendor may stipulate that the transfer of the ownership to the purchaser is subject to integral payment of the price, even if the thing sold has been delivered.
2. If the price is payable by Instalments, the contracting parties may agree that the vendor may retain a part of the price by way of damages, should the sale be cancelled for non-payment of all the Instalments, The Judge may, however,

according to circumstances, reduce the amount of damages agreed by applying the provisions of paragraph 2 of Article 221.

3. When all the instalments have been paid, the transfer of the ownership of the thing sold shall be deemed to have taken place as from the date of sale.
4. The provisions of the three preceding paragraphs are applicable even if the contracting parties have described the contract of sale as a contract of lease.

ARTICLE 428

The seller shall be obliged to deliver the goods sold to the purchaser in the same condition as they were at the time of the sale.

ARTICLE 429

Delivery includes delivery of the accessories of the thing sold and of all fixtures thereon as well as everything appropriated permanently for its use and everything else which, according to custom, as accessory to the thing sold even if not mentioned in the contract.

ARTICLE 430

1. If the contract specifies the quantity of the thing sold, the vendor shall guarantee any shortfall in such quantity according to the prevailing practice unless there is an agreement to the contrary. However, a purchaser may not seek revocation of the contract on ground of a shortfall in the thing sold unless he proves that such shortfall is so serious that he would not have executed the contract had he been aware thereof.
2. If the quantity of the thing sold exceeds that indicated in the contract, and if the price has been fixed by unit, the vendor shall, when the object of the sale can be divided, be entitled to the excess unless the purchaser decides to take it in consideration of the equivalent price but when the object of the purchase cannot be divided, the purchaser must pay for the excess unless it is great, in which case he may demand cancellation of the contract.

ARTICLE 431

In a case of deficiency or excess in the thing sold, the right of the purchaser to apply for the reduction of the price or for the cancellation of the contract and the right of the vendor to claim that the price be made up are both prescribed within one year from the date of the actual delivery of the thing sold.

ARTICLE 432

1. Delivery shall consist of placing the goods sold at the disposal of the purchaser in such a way that he can take possession of and enjoy them without hindrance, even if he does not take effective delivery thereof, provided that the seller shall inform the purchaser that the goods are at his disposal. Delivery shall be made in accordance with the nature of the goods sold.
2. Delivery may be completed by mere agreement between the parties where the goods sold were in possession of the purchaser prior to the sale, or where the seller retains the goods sold in his possession after the sale by virtue of a reason other than that of ownership.

ARTICLE 433

When the thing sold, must be sent to a designated place, delivery will not be effective, subject to an agreement to the contrary, until the thing reaches him.

ARTICLE 434

If the thing sold perishes before delivery as a result of a cause beyond the control of one of the contracting parties, the sale shall be dissolved and the price refunded to the purchaser, unless he was summoned to take delivery before the loss.

ARTICLE 435

If the value of the thing sold is diminished by deterioration before delivery, the purchaser shall have the option either of applying for the cancellation of the sale, if the diminution is so great that the sale would not have taken place, if the diminution had happened before the contract was concluded or of upholding the sale at a reduced price.

ARTICLE 436

The vendor warrants the purchaser against disturbance in his enjoyment of the thing sold both totally and partially if such disturbance is caused by the act of any third party claiming a right to the thing sold at the time of the sale enforceable against the purchaser. Further, the purchaser is bound by his warranty, even if the right of the third party has been established after the sale, provided that it was derived from the vendor himself or as a result of his act.

ARTICLE 437

1. When an action for revendiction in respect of the thing sold is brought against the purchaser, the vendor upon the receipt of notice of the action, shall, according to the circumstance and in conformity with the provisions of the Civil and Commercial Procedure Code, join ad a co-defendant with the purchaser, or take his place as defendant, in the action.
2. If notice is given in due time, the vendor who has not joined in the action is liable under his warranty, unless he proves that the judgment given in the action is the result of fraud or of gross negligence on the part of the purchaser.
3. If the purchaser does not notify the vendor of the action brought against him in due time and is dispossessed by a judgment that has become final, he shall be deprived of his right of recourse under the warranty, if the vendor establishes that, had he joined in the action, he would have succeeded in obtaining the dismissal of the action for rededication.

ARTICLE 438

The right of a purchaser to warranty exists even if he has acknowledged, in good faith, the third party's claim or has entered into a compromise with him without awaiting a decision of the Court, if he has, in due time, given notice of the action to the vendor and has Without result, called upon him to take his place in the action, subject, always, to proof by the vendor that the third party's claim is unfounded.

ARTICLE 439

When the purchaser has avoided total or partial dispossession of the thing sold by paying a sum of money or by performing some other prestations, the vendor may free himself from the consequences of warranty by refunding to the purchaser the sum paid, or the value of the prestation performed, together with legal interest and all expenses.

TOTAL DISPOSSESSION

ARTICLE 440

In the case of total dispossession the Purchaser may claim from the vendor:

1. The value of the thing sold at the time of dispossession, together with legal interest from that time;
2. The value of the profits derived from the thing sold that the purchaser has been obliged to restore to the person entitled to the thing;
3. All sums usefully spent which he cannot claim from the person entitled to the thing, together with expenditure of a superfluous character, if the vendor acted in bad faith;
4. all cost incurred in the action upon the warranty and the action of revendication, with the exception of those costs that the purchaser could have avoided by notifying the vendor of the action of revendication, in accordance with Article 437;
5. And generally, compensation for the losses sustained and profits missed as a result of the dispossession of the thing sold; unless in all these cases the purchaser's action against the vendor is based on a demand for dissolution or for annulment of the sale.

ARTICLE 441

1. In case of partial dispossession, or if the thing sold is encumbered with a charge or a lien in favour of a third party, the purchaser, if the loss is of such a nature that had he been aware thereof, he would not have entered into the contract, may return the thing sold and the benefit gained there from in addition to claiming from the vendor, the amounts provided for in the preceding Article.

2. If the purchaser prefers to retain the thing sold or when the loss sustained by him does not reach the degree of gravity defined in the first paragraph, he has only the right to apply for compensation in respect of the loss he has sustained as a result of dispossession according to the provisions of the preceding Article.

ARTICLE 442

1. The contracting parties may, by agreement, increase the warranty against dispossession, restrict it or stipulate that the sale is without warranty.
2. A clause that the sale is with a reduced warranty or without warranty against dispossession shall be null and void if the vendor intentionally conceals the reason for dispossession or if the dispossession arises from his act.

ARTICLE 443

1. If the contracting parties agree to exclude the warranty the seller shall remain liable for any merit that arises from his act and any agreement that decides otherwise is null and void.
2. Notwithstanding a clause excluding a warranty, the seller shall remain liable to refund the sale price and any expenses incurred by the dispossession, unless he proves that the purchaser knew at the time of the sale of the grounds for dispossession or that he purchased the goods with the risk of dispossession.

ARTICLE 444

1. The vendor is liable under this warranty, when, at the time of delivery, the thing sold does not possess the qualities the existence of which he guaranteed to the purchaser, or when the thing sold has defects diminishing its value or usefulness for the purpose for which it was intended, as shown by the contract or the destined use of the thing. The vendor is answerable for these defects, even if he was ignorant of their existence.
2. The vendor, however, is not answerable for the defects of which the purchaser was aware at the time of the sale or which he could have discovered himself had he examined the thing with the care of a reasonable person, unless the purchaser proves that the vendor has affirmed to him the absence of these defects or fraudulently concealed them from him.

ARTICLE 445

The vendor is not liable for defects which are customarily tolerated.

ARTICLE 446

1. When the purchaser has taken delivery of the thing sold he must ascertain its condition as soon as he is able to do so in accordance with common usage. If he discovers a defect for which the vendor is answerable, he must give notice thereof to the vendor within a reasonable time, failing which he will be deemed to have accepted the thing sold.
2. In case, however, of defects that cannot be discovered by means of normal inspection, the purchaser shall, upon the discovery of the defect, at once give notice thereof to the vendor, failing which he will be deemed to have accepted the thing sold with its defects.

ARTICLE 447

When the purchaser has given notice to the vendor of the defect in the thing in due time he will be entitled to bring an action on the warranty in accordance with Article 441.

ARTICLE 448

An action on a warranty exists even if the thing sold has perished, whatever may be the cause.

ARTICLE 449

1. An action on a warranty shall prescribe after a period of one year has elapsed from the date of delivery of the goods sold, even if the purchaser discovers the defect after the expiration of this period, unless the seller agrees to be bound by the warranty for a longer period.
2. The seller, however, cannot avail himself of the prescription period if it is proved that he fraudulently concealed the defect from the purchaser.

ARTICLE 450

The contracting parties may by specific agreement increase, restrict or abolish the warranty, a clause abolishing or restricting the warranty shall be void if the seller intentionally and fraudulently conceals defects in the goods sold.

ARTICLE 451

No warranty shall exist against defects in cases of a judicial sale or administrative sale made by auction.

ARTICLE 452

Where a seller has warranted the proper operation of the goods sold for an agreed period of time, and they develop a defect within this period, thepurchaser shall notify the seller of such defect within one month, and taking action of this regard may be filed within six months from the date of notification of the defect, failing which the purchaser shall forfeit his right to claim compensation, all of the above shall apply unless otherwise agreed.

ARTICLE 453

BUYER'S OBLIGATIONS

1. Unless otherwise agreed upon or dictated by custom, the price shall be due for payment at the place of delivery of the sold items.
2. Should payment not be due at the time of delivery, the same shall be affected at the seller's place of residence at such time when payment is due.

ARTICLE 454

1. Subject to a clause or custom to the contrary, the price is payable at the time when the delivery of the thing sold is made.
2. When the purchaser is disturbed in his enjoyment by a third party invoking a right existing prior to the sale or derived from the vendor, or if he is in danger of being dispossessed of the thing sold, he may, subject to an agreement to the contrary, retain the price until the disturbance in his enjoyment or the danger of dispossession has ceased. The vendor may, however, in such case, demand payment of the price upon his supplying security.

3. The provision of the preceding paragraph will apply if a defect is discovered in the thing sold.

ARTICLE 455

1. Subject to an agreement or custom to the contrary, the vendor is not entitled to legal interest on the price, unless he has placed the purchaser in default by a formal summons, or unless the thing sold is productive of fruits or other profits and he has delivered the thing sold to the purchaser.
2. Subject to an agreement or usage to the contrary, the purchaser acquires the revenues and increase in value of, and is liable for all charges in connection with the thing sold from the time the sale is concluded.

ARTICLE 456

1. When the whole or part of the price is payable immediately, the vendor, unless he grants the purchaser a delay for payment after the date of the sale, may retain the thing sold until he obtains payment of the amount due, even if the purchaser has offered a mortgage or security.
2. The vendor may also retain the thing sold, even if the agreed date of payment has not fallen due, if the purchaser loses the benefit of the term in accordance with the provisions of Article 270.

ARTICLE 457

If the thing sold perishes while in possession of the vendor while exercising his right of retention, the purchaser is liable for the loss unless the thing sold perishes as a result of an act of the vendor.

ARTICLE 458

In the case of a sale of movables, where the terms for payment and delivery are agreed, the seller shall be entitled to consider the sale terminated without the need for notice if the purchaser fails to make payment by the due date, unless there is an agreement to the contrary.

ARTICLE 459

In the absence of an agreement or usage to the contrary, the costs of the sale contract, registration fees, costs of payment of the price, stamp duties, costs of delivering the thing sold and such other expenses shall be borne by the purchaser.

ARTICLE 460

In the absence of agreement or usage indicating the place and time of delivery, the purchaser is bound to take delivery of the thing sold at the place where it was at the time of the sale and to remove it without delay, subject to the time necessary for such removal.

ARTICLE 461

Subject to usage or to an agreement to the contrary, the costs of taking delivery of the thing sold are borne by the purchaser.

DIFFERENT FORMS OF SALE

SALE WITH A RIGHT OF REDEMPTION

ARTICLE 462

When a vendor reserves to himself at the time of the sale the right to take back the thing sold, within a fixed time, the sale will be void.

ARTICLE 463

1. When a person sells a definite and ascertained thing of which he is not the owner, the purchaser may demand the annulment of the sale. This rule also applies when the Thing sold is an immovable whether the deed has been transcribed or not.
2. Such a sale cannot, in any case, have any effect as against the owner of the thing sold, even if the purchaser has ratified the contract.

ARTICLE 464

1. Where the owner accepts the sale, the contract shall be effective against him and valid against the purchaser.
2. The contract shall also be valid against the purchaser if the title to the property is vested in the seller after the date of the contract.

ARTICLE 465

Where the purchaser is awarded a judgment that the sale is invalid in accordance with the preceding Article, and the purchaser is not aware that the sale item is owned by a third party, the purchaser may demand the seller pay indemnity, even if the seller acts in good faith.

SALE OF LITIGIOUS RIGHTS

ARTICLE 466

1. When the owner of a litigious right, has assigned it to a third party for valuable consideration, the debt against whom the right has been assigned, may extinguish the right assigned by paying to the assignee, the actual price paid by him, together with expenses and interest accrued on the price from the date of the payment of the price.
2. The right is deemed to be litigious if there is an action in court or serious controversy in respect thereof.

ARTICLE 467

The provisions of the preceding Article shall not apply to any of the following events:

a. Where the disputed right is part of a number of assets sold haphazardly for a single price;
b. Where the disputed right is held in common and either partner sells his share to another partner;
c. Where the disputed right is disposed of by its holder in settlement of a debt payable by the creditor;
d. Where the disputed right is secured by a mortgage on real property and such right is sold to the holder of such real property.

ARTICLE 468

no member of the magistracy or of the "Parquet", no lawyer, greffier or bailiff of a Court may, under pain of nullity of the sale, purchase, either In his own name or in the name of an intermediary, in whole or in part, any litigious rights coming within the jurisdiction of the Court in the district of which he exercises his functions.

ARTICLE 469

No lawyer may, under pain of nullity, either in his own name or in the name of an intermediary, enter into an agreement with his client with regard to a litigious right, when he has undertaken to defend his right, otherwise the agreement will be void.

SALE OF INHERITANCE

ARTICLE 470

Where a person who sells an inheritance without giving particulars thereof only warrants that he is an heir, unless otherwise agreed.

ARTICLE 471

1. Where the estate is sold in full or in part, the sale shall not be effective against third parties unless the purchaser satisfies all procedures required to transfer every right involved in the estate.
2. Where the law provides for procedures to transfer the right as between the contracting parties, such procedures shall also be satisfied.

ARTICLE 472

The vendor, if he has encashed debts or sold any of the property forming part of the inheritance, must reimburse the purchaser up to the amount he has received, unless he has inserted in the contract of sale an express clause of non-reimbursement.

ARTICLE 473

The purchaser must reimburse the vendor whatever he may have paid in respect of the debts of the inheritance and pay him anything that is due to him by the estate, subject to any agreement to the contrary.

SALE MADE DURING A PERSON'S LAST ILLNESS

ARTICLE 474

1. Where a person on his death bed sells to an heir or otherwise at a price less than the value of the sale item at the time of death, the sale shall be effective against the heirs if the difference between the true value of the sale item and the price paid does not exceed one third of the estate, including the sale item itself.

2. However, where the difference between the true value of the sale item and the price paid exceeds one third of the estate, the sale in excess of one third shall not be effective against the heirs unless they accept the sale or unless the purchaser returns such excess to balance the estate to become two thirds.
3. The provisions of Article 727, herein shall apply to the sale by a person on his death bed.

ARTICLE 475

The provisions of the preceding Articles do not apply to the prejudice of a third party in good faith who has acquired for valuable consideration a real right over the property sold.

SALE BY A REPRESENTATIVE TO HIMSELF

ARTICLE 476

Subject to the provisions of any other laws, no person who represents another person by virtue of an agreement, a provision in the law or an order of a competent authority may purchase, either in his own name or in the name of an intermediary, even at a public auction, property entrusted to him for sale in his representative capacity, unless he has been authorized to do so by an order of the Court.

ARTICLE 477

No brokers or experts may purchase in their name or in the name of an intermediary goods which they have been entrusted to sell or to appraise.

ARTICLE 478

A sale in the cases referred to in the two preceding Articles becomes valid if it is confirmed by the person on behalf of whom the sale was carried out.

CHAPTER TWO

BARTER

ARTICLE 479

Barter shall be defined as a contract under which either party undertakes to transfer to the other party, by way of exchange, the title to any property other than money.

ARTICLE 480

Where the value of the exchanged thing is different as assessed by the parties, the difference may be settled in cash.

ARTICLE 481

The costs and expenses of the barter agreement and the registration fees shall be borne equally by the parties, unless otherwise agreed.

ARTICLE 482

Barter shall be subject to the provisions of sale to the extent allowed by the nature of barter and each of the contracting parties shall be deemed as a vendor of the thing given by him in exchange and the purchaser of the thing received in exchange.

CHAPTER THREE

GIFT

ELEMENTS OF GIFT

ARTICLE 483

1. A gift is a contract by which the donor disposes, without consideration, of property belonging to him.
2. A donor may, without being divested of the intention of making a gift, impose upon the donee the performance of a specific obligation.

ARTICLE 484

1. A gift is not complete until it is accepted by the donee or his representative.
2. If the donor is the natural or legal guardian of the donee, he may accept the gift on his behalf and take delivery thereof.

ARTICLE 485

1. The gift may be made by an authentic document under pain of nullity, unless it is made in the form of some other contract.
2. A gift of movables, however, may be completed by delivery to the donee, without an official instrument being necessary.

ARTICLE 486

The donor, or his heirs, who voluntarily give effect to a gift which is null by reason of defect in form, cannot demand the restitution of what they have delivered.

ARTICLE 487

A promise to make a gift is not binding unless it is made by an authentic document.

ARTICLE 488

If the gift is of a definite and specific thing which does not belong to the donor, it is governed by the provisions of Articles 463 and 464.

ARTICLE 489

A gift of future property is void.

ARTICLE 490

When the donee has not taken possession of the thing given, the donor is under an obligation to deliver it to him. The provisions as to the delivery of a thing sold shall, in such a case, apply.

ARTICLE 491

1. Unless otherwise agreed a donor is under no obligation or warranty against dispossession, unless he has intentionally hidden the cause of dispossession or unless the gift has been made for valuable consideration in the first case, the judge will award the donee. Equitable compensation for the prejudice he has suffered. In the second case the donor is only bound up to the value of the consideration paid by the donee.
2. In a case of dispossession the donee is subrogated in to the rights and actions of the donor.

ARTICLE 492

1. A donor does not warrant that the thing given is free from defects.
2. If, however, the donor has intentionally hidden a defect or if he has warranted that the thing donated is free of defects, he will be liable to compensate the donee for lost caused by this defect He will also be bound to pay compensation if the gift is made for valuable consideration, provided that the amount of compensation does not exceed the value of the consideration given by the donee.

ARTICLE 493

A donor is only liable for his intentional acts or for his gross negligence.

ARTICLE 494

A donee is bound to perform the consideration imposed upon him, whether such consideration is in favour of the donor, a third party, or in the public interest.

ARTICLE 495

If it appears that the value of the gift is less than that of the consideration Imposed, the donee shall only be liable to perform the consideration to the extent of the value of the thing donated.

ARTICLE 496

1. If the donor stipulates that the donee shall, in consideration of the gift, discharge his debts, the donee shall only be liable, unless otherwise agreed, to discharge debts existing at the time of the gift.
2. If the thing donated is burdened with a real right securing the debt due by the donor or by a third party, the donee shall be liable, unless otherwise agreed, to pay this debt.

REVOCATION OF GIFTS

ARTICLE 497

1. A donor may revoke a gift if the donee consents to his so doing
2. If the donee does not consent to the revocation, the donor may apply to the court for authority to revoke the gift, whenever he has reasonable grounds in support and when there is no obstacle to the revocation.

ARTICLE 498

There are in particular, reasonable grounds for the revocation of a gift:

a. if the donee has failed, in his duties towards the donor or one of his relative, and such failure constitutes serious ingratitude on his part;
b. if the donee has become unable to maintain himself in accordance with his social position or to meet an obligation to pay alimony which he is legally bound to pay to another person;

c. In the event of a child being born to the donor after the donation, and still being alive at the time of the revocation, or if the donor had a child which he believed dead at the time of the donation, which child is discovered to be still alive.

ARTICLE 499

An application for the revocation of a gift shall be rejected if one of the following obstacles exists:

a. If there is an inherent increase of the thing given, involving an increase in value thereof: but if this obstacle disappears, the right of revocation is renewed;
b. if one of the parties to the gift dies;
c. If the donee has definitely alienated the thing given; if. however, such alienation is only partial, the donor may revoke the gift as to the part remaining;
d. If the gift is made by one spouse to another, even if the donor wishes to revoke the gift after the dissolution of the marriage;
e. if the gift is made for the benefit of a relative with whom marriage is prohibited:
f. If the thing given has perished while in possession of the donee, whether by the act of the donee, by a cause beyond his control not attributable to him. or by use; if, however, the loss is partial, the revocation may be for the part remaining;
g. If the donee has supplied valuable consideration for the gift;
h. If the gift constitutes alms or an act of charity.

ARTICLE 500

1. A gift revoked by mutual consent or by a judgment is deemed to be null and void.
2. The donee is only liable for the restitution of the fruits as from the date of the agreement of revocation or from the date of the commencement of legal proceedings. He has the right to claim repayment of all necessary expenses that he has incurred and also of sum's usefully spent by him but only up to the amount of any increase in value of the thing donated.

ARTICLE 501

1. If, without the consent of the donee or without a decision of the Court, the donor takes back the thing given, he is responsible to the donee for the loss of the thing donated whether such loss occurs from his act, from a cause beyond his control which is not attributable to him, or as a result of the use of the thing.
2. If the revocation of the gift is pronounced by a judgment and the thing donated perishes while in the possession of the donee, after he has been formally summoned to hand back the thing, the donee is responsible for loss even if it resulted from a cause beyond his control.

CHAPTER FOUR

THE COMPANY

ARTICLE 502

Partnership is a contract whereby two or more persons bind themselves to contribute property or services for the exercise of an economic undertaking and to share the result in profits or losses.

ARTICLE 503

1. A company shall be considered a legal entity once it has been established, but such entity shall not be effective against any third party until the completion of the publication procedures as provided for by law.
2. However, if the company fails to complete the prescribed publication procedures, the third parties may hold to the personality of the company.

ARTICLE 504

The provisions of the company contract and the rules for the establishment, management, termination and liquidation of companies shall be regulated.

CHAPTER FIVE

LOANS

ARTICLE 505

A loan is a contract by which the lender undertakes to transfer to the borrower the ownership of a sum of money or other fungible upon condition that the borrower returns a thing equal in amount, kind and quality.

ARTICLE 506

1. The lender must deliver to the borrower the thing which is the object of the contract and cannot claim the return of its equivalent until the end of the loan.
2. If the thing perishes before its delivery to the borrower, the loss falls on the lender.

ARTICLE 507

In the event of dispossession, the provisions relating to sale will apply if the loan is made for valuable consideration; otherwise the provisions relating to loan for use will apply.

ARTICLE 508

1. When the loan is made without valuable consideration, and hidden defects appear in the thing, the borrower, if he prefers to retain the thing, will only be liable to refund the value of the defective thing.
2. When the loan is made for valuable consideration, or when it is made without valuable consideration but the lender has deliberately hidden the defects, the borrower may demand either that the defect be made well or that the defective thing be replaced by a thing without defects.

ARTICLE 509

The borrower is under obligation to pay the agreed interest as it falls due, in the absence of such agreement as regards interest, the loan is deemed without consideration.

ARTICLE 510

The loan comes to an end upon the expiration of the term agreed upon.

ARTICLE 511

If the interest is agreed, the debtor may, after six months from the date of the loan, to declare his intention to terminate the contract and to restitute the thing taken on loan, provided that the restitution takes place within a term not exceeding six months of the date of declaration, in this casethe debtor shall be liable to pay the interest due six months following notification, and will not, in any case, be bound to pay interest or to perform a prestation of any kind by the reason of the fact that payment is made before due date. The right of the borrower to efficient restitution, cannot be forfeited or limited by agreement.

CHAPTER SIX

RECONCILIATION

ELEMENTS OF RECONCILIATION

ARTICLE 512

Reconciliation is a contract under which the parties settle a dispute between them, or avoid a contingent dispute by each party waiving the corresponding part of their claim.

ARTICLE 513

In order to effect reconciliation, the parties shall have legal capacity to dispose for valuable consideration of the rights, which are the subject of the reconciliation.

ARTICLE 514

Issues relating to personal matters or public order may not be reconciled. However, financial rights arising from such personal matters or that may arise from the commission of any crime may be reconciled.

ARTICLE 515

Reconciliation shall not be effective unless in writing or recorded in formal minutes.

SECTION TWO

EFFECTS OF RECOCILATION

ARTICLE 516

1. Reconciliation terminates the disputes in respect of which the reconciliation is made.
2. It extinguishes the rights and claims, which either of the parties has finally renounced.

ARTICLE 517

Reconciliation shall have a revealing effect in connection with the disputed rights to the exclusion of any other rights.

ARTICLE 518

The wording of the waiver contained in reconciliation shall be narrowly construed. In any event, the waiver shall apply to such rights that are clearly the subject matter of the dispute settled by such reconciliation.

ARTICLE 519

Reconciliation cannot be impugned on the ground of a mistake in law.

ARTICLE 520

1. Reconciliation is indivisible. The nullity of one part of reconciliation involves the nullity of the whole contract.
2. This rule does not apply, however, when it follows, from the wording of the contract or from the circumstances, that the parties agreed that the various parts of the compromise are separate and independent the one of the other.

PART TWO

CONTRACTS RELATING TO THE USE OF THINGS

CHAPTER ONE

LEASES

LEASES GENERALLY

ELEMENTS OF LEASES

ARTICLE 521

A lease is a contract by which the lessor undertakes to enable the lessee to enjoy a specific thing for a certain time in return for a fixed rent.

ARTICLE 522

A lease granted by a usufructuary, unless ratified by the bare owner, ends when the usufruct is extinguished, subject to the delay provided for giving notice of evacuation and the time required to gather and transport the annual crop.

ARTICLE 523

Rent may consist either of money or of any other financial consideration.

ARTICLE 524

If the parties have not agreed the amount of the rent or the manner in which the rent shall be fixed, or if the amount of the rent cannot be established, it shall be based on the current rent for other similar properties.

ARTICLE 525

If a lease agreement is concluded without any agreement as to term, or for an undetermined period, or if the term cannot be established, it shall be deemed to have been made for the term fixed for payment of the rent. The lease shall expire at the end of the term in question, at the request of one of the parties, subject to notice being given by him to the other by a registered letter for vacating the property before the end of the latter part of the lease term.

EFFECTS OF THE LEASE

ARTICLE 526

The lessor is bound to deliver to the lessee the leased property and its accessories in a condition suitable for the purpose for which it is intended, in accordance with the agreement between the parties or with the nature of the property.

ARTICLE 527

1. If the leased property is delivered to the lessee in such a condition that it is unfit for the use for which it is leased, or if its usefulness is appreciably diminished, the lessee may demand either the cancellation of the lease agreement or a reduction of the rent equivalent to the loss of use; in both cases he is entitled to claim compensation, if compensation is due without prejudice to his right to oblige the lessor to carry out the necessary repairs to enable him to get the intended benefit.
2. If the leased property is in such a condition that it constitutes a serious threat to the health of the lessee, or those who live with him, or his employees or workmen, the lessee may demand revocation of the lease agreement, even if he has renounced the right to do so beforehand.

ARTICLE 528

The provisions applicable to the delivery of a sold property shall also apply to the obligation to deliver a leased property, particularly in connection with the time and place of delivery, the description of the leased property and its annexes, or any deficiency or excess therein, unless the law provides otherwise.

ARTICLE 529

The lessor is bound to maintain the leased property to keep it in a condition allowing making use of the intended benefit. He shall make, during the continuance of the lease, all repairs which may become necessary according to the prevailing practice.

ARTICLE 530

1. If a lessor, having been summoned, delays the performance of the obligations mentioned in the previous Article, the lessee may, without prejudice to his right to claim resiliation of the lease or a reduction of rent, obtain authority of the Court to perform them himself and deduct the cost from the rent.

2. In the case of immediate repairs or minor repairs for which the lessor is responsible, whether resulting from a defect existing at the time the premises were taken over by the lessee or happening subsequently through no fault of the lessee, the lessee may, without the authority of the Court, carry them out and deduct the cost thereof from the rent, if the lessor, having been summoned to do so, does not carry them out in a reasonable time.

ARTICLE 531

1. If, during the course of the lease, the leased property is totally destroyed, the lease is, ipso facto, terminated.
2. If, as a result of a cause not imputable to the lessee, the leased property is only partially destroyed or deteriorates to such an extent that it becomes unfit for the use for which It was leased, or it such a use is appreciably diminished, the lessee may, if the lessor does not restore the leased property to its original condition within a reasonable time, claim, according to the circumstances, either a reduction of the rent or the resiliation of the lease, without prejudice to his right to perform himself the obligations of the lessor in accordance with the provisions of the preceding Article.
3. In the two preceding cases, the lessee cannot claim compensation if the loss or deterioration arises from a cause not imputable to the lessor.

ARTICLE 532

1. The lessee must not prevent the lessor from making immediate repairs required for the preservation of the leased property, but if such repairs cause a complete or partial loss of enjoyment, the lease may claim, according to the circumstances, resiliation of the lease or a reduction of the rent.
2. If, however, the lessee continues to occupy the premises until the repairs are completed, he will forfeit his rights to claim resiliation of the lease.

ARTICLE 533

1. The lessor shall abstain from doing anything which may disturb the lessee in his enjoyment of the leased property, and shall not make any alterations to the property or to its accessories that diminish such enjoyment.

2. The lessor not only warrants the lessee against his own acts and against those of his servants but also against any disturbance or damage based on a lawful claim by any other lessee or by any successor in title of the lessor.

ARTICLE 534

1. If a third party claims to have rights incompatible with those derived by the lessee from the lease agreement, the lessee shall forthwith give notice to the lessor of such a claim.
2. If, as a result of such a claim, the lessee is effectively deprived of the enjoyment to which he is entitled in accordance with the lease agreement, he may in accordance with the circumstances, claim revocation of the lease agreement or a reduction of rent together with payment of damages if damages are due.

ARTICLE 535

1. When there are several lessees of the same property, the lessee who. Without fraud, first entered into possession will have preference. If a lessee of an immovable property has in good faith, affected transcription of his lease, before another lessee has entered into possession or before the renewal of his lease, such lessee will have preference.
2. In the absence of reasons giving preference to one lessee, the only recourse of a lessee in respect of any right not enjoyed by him is a claim for damages.

ARTICLE 536

If, as a result of an act lawfully done by a Government Authority, the enjoyment of the property leased is appreciably diminished, the lessee may, in accordance with the circumstances, and unless otherwise agreed between the parties, claim resiliation of the lease or a reduction of rent; if the grounds for the act of such Government Authority are the result of an act imputable to the lessor, the lessee may claim payment of damages,

ARTICLE 537

1. A lessor does not warrant the lessee against trespass by a third party who does not claim a right over the leased property: this shall not, however, affect the right of the lessee to take action in his name against such third party for damages and to take all other possessory actions.

2. It, however, the trespass is not in any way imputable to the lessee and is sufficiently serious to deprive him of the enjoyment of the leased property, the lessee may, in accordance with the circumstances, claim resiliation of the lease or a reduction of rent.

ARTICLE 538

1. Subject to any agreement to the contrary, the lessor warrants the lessee against all defects which prevent or appreciably diminish enjoyment of the property; but not against those defects that are customarily tolerated, and is responsible for the lack of qualities which he specifically warranted existing or which are essential to the intended use of the property.
2. The lessor, however, does not warrant the lessee against defects of which the lessee was informed or of which he was aware at the time of the conclusion of the contract.

ARTICLE 539

1. If the leased property is found to have a defect against which the lessee has been warranted by the lessor, the lessee may, in this case ask for repair of defect at the expense of the lessor where such repair is not excessive burden to the lessor.
2. If the defected caused any damage to the lessee, the lessor shall be liable to pay compensation, unless the lessor can establish that he was not aware of the defect.

ARTICLE 540

Any agreement excluding or limiting the warranty against disturbance or defects it void if the lessor has fraudulently hidden the cause of such warranty.

ARTICLE 541

The lessee must use the leased property in the manner agreed. In the absence of any agreement, he must use the property in accordance with the purpose for which it is designed.

ARTICLE 542

1. The lessee may not, without the permission of the lessor, make any alteration to the leased property unless no damage is thereby occasioned to the lessor.

2. If the lessee makes alterations to the leased property in excess of the limits prescribed in the preceding paragraph, he may be compelled to reinstate the property in its original condition and to pay compensation if compensation is due.

ARTICLE 543

1. The lessee may install in the leased property, unless the lessor can show that the installations endanger the safety of the building, water, electric light, gas, telephone, wireless and other like installations, provided that the manner in which such installations are made is not contrary to general practice.
2. If the intervention of the lessor is necessary for the completion of any of these installations, the lessee may call upon the lessor to intervene, on condition that he undertakes to pay the expenses incurred by the lessor in this connection.

ARTICLE 544

1. The lessee shall use and preserve the leased property with the care of a reasonable person.
2. The lessee is responsible for any deterioration of or loss to the leased property during his enjoyment thereof, which is not the result of normal use.

ARTICLE 545

1. The lessee shall be responsible for damage to the leased property by fire, unless he can establish that the cause thereof was not imputable to him.
2. When the property is occupied by several lessees, all such lessees, including the landlord if he lives on the premises, are responsible for the fire, each in proportion to the part he occupies, unless it is proved that the fire started in the part occupied by one of them, in which case that one alone shall be responsible.

ARTICLE 546

The lessee shall forthwith notify the lessor of all matters that require his intervention, such as urgent repairs, the discovery of defects, encroachments and disturbances or damage by third parties to the leased property.

ARTICLE 547

1. The lessee shall pay the rent at the agreed times and, in the absence of agreement, at times established by custom and usage.

2. In the absence of an agreement or local custom to the contrary, the rent will be paid at the domicile of the lessee.

ARTICLE 548

The payment of a term's rent establishes in favour of the payee a presumption, subject to proof to the contrary, that former terms have been paid.

ARTICLE 549

Unless the rent is paid in advance or unless the lessee provides other guarantees, the lessee of a house, warehouse, shop or similar establishment or of agricultural land, is bound, in the absence of an Agreement to the contrary, to stock the leased property with furniture, goods, crops, cattle or implements of sufficient value to secure the rent.

ARTICLE 550

1. The lessor has, as warranty for all amounts due to him under the lease agreement, a lien on all the attachable movables kept in the leased property, while they are subject to the lessor's right of privilege, even when they do not belong to the lessee. The lessor has the right to object to their removal and, if they are removed notwithstanding his objections or without his knowledge, to claim their recovery from their possessor even in good faith, subject always to the rights of such possessor thereon.
2. The lessor shall not exercise his rights of retention or of recovery when the movables have been removed to meet the professional requirements of the lessee or in accordance with customary requirements of daily life, or if the movables remaining on the leased property or already recovered are sufficient fully to cover the rent.

ARTICLE 551

The lessee shall be bound, upon the expiration of the lease, to restitute the leased property. If he retains it unlawfully, he must pay compensation to the lessor on the basis of the rental value of the property and of the damage suffered by the lessor.

ARTICLE 552

1. The lessee shall be bound to restitute the leased property in the condition in which it was at the time he took delivery thereof, subject to loss or deterioration due to a cause not attributed to him.
2. If no process-verbal setting out particulars of the property was drawn up at the time of delivery, the lessee is presumed, subject to proof to the contrary to have received the property in good condition.

ARTICLE 553

1. Where the lessee introduces into the leased property, building or plantations or other improvements which enhance the value of the tenement, the lessor shall be bound to repay to the lessee his expenses on such improvements or the amount by which the value of the tenement was enhanced unless there be an agreement to the contrary.
2. Where such implements were made without knowledge of the lessor notwithstanding his opposition, he may ask the lessee to remove them. He may further ask for compensation in respect of the harm which was caused to the property as a result of such removal where compensation is justified.
3. Where the lessor chooses to retain such improvements in consideration of paying one of the aforesaid amounts, the Court may allow him some time to pay.

ASSIGNMENT OF LEASE AND SUB-LEASE

ARTICLE 554

The lessee may not, in the absence of an agreement to the contrary, assign his lease or sublet the whole or any part of the leased property.

ARTICLE 555

1. The lessee may not, in the absence of an agreement to the contrary, assign his lease or sublet the whole or any part of the leased property.
2. When, in the case of a lease of a real property in which an industrial or commercial establishment has been created, circumstances have compelled the lessee to sell such industrial or commercial establishment, the Court may decide to maintain the lease in force if the purchaser furnishes adequate security and the lessor suffers no real prejudice thereby.

ARTICLE 556

When the lease is assigned, the principal lessee remains guarantor for the performance of the assignee's obligation.

ARTICLE 557

1. A sub-lessee is answerable directly to the lessor for the amounts that the sub-lessee, owes tothe lessee as from the time a summons is served on him by the lessor.
2. A sub-lessee cannot set up against the lessor payments made by him in advance to the principallessee, unless they were made before the summons, in accordance with custom or a formal agreement concluded at the time of the sub-lease.

ARTICLE 558

A lessee ceases to be answerable to the lessor, either as guarantor of the assignee in case of the assignment of the lease agreement, or as regards his obligations arising from the principal lease agreement in the case of a sublease

a. If the lessor has expressly or implicitly agreed to the assignment of lease or to the sub-lease.
b. The lessor's receipt of the rent directly from the assignee or sub-lessee shall be deemed as an implicit acceptance without making any reservations with respect to his rights towards the original lessee.

THE END OF THE LEASE AGREEMENT

ARTICLE 559

A lease ends upon the expiry of the agreed term without it being necessary to give notice of evacuation.

ARTICLE 560

1. If after the lease has expired, the lessees continue, to enjoy the leased property to the knowledge of and without objection on the part of the lessor, the lease is deemed to be renewed upon the same conditions but for an indefinite duration. The lease so renewed is governed by the provision of Article 525.

2. This tacit renewal is deemed to be a new lease and not a mere prolongation of the original lease. Nevertheless, subject to the rules of publications applicable to real property, the real securities supplied by the lessee in guarantee of the old lease are transferred to the new lease. The surety ship, whether personal or real, is not transferred to the new lease unless the surety consents thereto.

ARTICLE 561

When notice of evacuation has been given by one party to the other and the lessee, notwithstanding the notice, continues to enjoy the property after the expiry of the lease, the lease will not, subject to proof to the contrary, be deemed to have been renewed.

DEATH OR INSOVENCY OF LESSEE

ARTICLE 562

1. A contract of lease is not terminated either by the death of the lessor or of the lessee.
2. In the event of the death of the lessee, however, his heirs may claim the termination of the lease if they establish that, as a result of the death of the person whose estate they inherited, the burden of the lease has become too heavy for their resources or that the lease exceeds their needs. In such an event, the periods of notice of termination laid down in Article 525 shall be observed and the claim for termination of the lease made within six months at the most from the date of the death of the lessee.

ARTICLE 563

If the lease has been granted to the lessee solely on account of his calling or of other considerations relating to his person, his heirs or the lessor may, on his death, claim termination of the lease.

ARTICLE 564

1. The insolvency of the tenant does not result in the settlement of an undue rent
2. However, the lessor may demand the termination of the lease if securities are not provided to him in an appropriate time to ensure payment of the rent that was not due. Likewise, the lessee may, if he is not authorized to waive the lease or sub-lease, demand the termination, provided that he pays a fair compensation.

ARTICLE 565

1. In the case of a voluntary or forced transfer of the ownership of the leased property to a third party, the new owner is only bound by the lease if it has been given an established date prior to theact entailing the transfer of ownership.
2. The new owner may, however, avail himself of the contract of lease, even if he is not bound by such contract.

ARTICLE 566

1. A person acquiring the leased property, who is not bound by the lessee, by giving him notice as provided for in article 525.
2. In the absence of a provision to the contrary, the lessor must, if notice of eviction is given before the end of the lease, compensate the lessee, the lessee cannot be evicted before he receives compensation either from the lessor or from the new owner paying on behalf of the lessor, or until he has obtained an adequate security for the payment of such compensation.

ARTICLE 567

The lessee cannot set up rent paid in advance against a new owner, if the new owner proves that at the time of payment the lessee knew or should necessarily have known of the transfer of the ownership. Failing proof thereof, the new owner has only a remedy against the lessor.

ARTICLE 568

When it has been agreed that the lessor may terminate the contract if he becomes personally in need of the property, he shall, if he exercises his right, be bound, unless otherwise agreed, to give the lessee notice of termination in accordance with the delays provided for in Article 525.

ARTICLE 569

An official or an employee whose duties oblige him to change his place of residence may claim termination of the lease of his dwelling house, when his lease is made for a fixed period, provided that he gives notice of such termination in accordance with the delays provided for in Article 525. Any agreement to the contrary is void.

CERTAIN KINDS OF LEASE

LEASES OF AGRICULTURAL LAND

ARTICLE 570

If the leased property is agricultural land, the lessor is not bound to hand over to the lessee agricultural implements existing on the land unless they are included in the lease.

ARTICLE 571

When agricultural implements belonging to the lessor are handed over to the lessee, the lessee is under the obligation to take proper care of them and to maintain them in the manner required for their customary use.

ARTICLE 572

1. A lessee of agricultural land must work the land in accordance with the requirement, of normal agricultural use. He must, more particularly, maintain the land in a good state of production.
2. He must not, without the consent of the lessor, make any substantial change in the established method of cultivating the land, the effect, of which might extend beyond the period of the lease.

ARTICLE 573

The lessee may not do anything that limits or delays the use of the land by his successor, in particular, and within a reasonable time prior to vacating the property, the lessee shall permit such successor to cultivate and sow the land without any consequent damage.

CHAPTER TWO

LOAN FOR USE

ARTICLE 574

A loan for use is a contract by which the lender undertakes to hand over to the borrower without valuable consideration, a non-consumable thing for his use during a specific time or for a specific purpose, which thing the borrower undertakes to restitute after having used it.

OBLIGATIONS OF LENDER

ARTICLE 575

The lender is bound to hand over to the borrower the thing lent in the condition in which it was at the time of the conclusion of the contract of loan for use, and to leave him in possession of the thing lent during the period of the contract.

ARTICLE 576

1. If, during the period of the loan, the borrower is obliged to incur expenses necessary for the preservation of the thing; the lender must reimburse him his expenses.
2. In the case of moneys usefully spent, the provisions with regard to expenses incurred by a possessor in bad faith will be applicable.

ARTICLE 577

1. The lender shall not warrant against dispossession of the thing loaned unless there has been an agreement for such warranty or the lender has deliberately concealed the cause of dispossession.
2. Similarly, the lender does not warrant against hidden defects. If, however, he has deliberately concealed such defects, or has warranted that the thing is free from defects, he is bound to compensate the borrower for any loss he has suffered as a result thereof.

OBLIGATIONS OF BORROWER

ARTICLE 578

1. The borrower may only use the thing lent in the manner and to the extent provided for in the contract, according to the nature of the thing or in accordance with custom. He must not assign the use to a third party, even gratuitously, without the authority of the lender.
2. The borrower is not responsible for changes to or deterioration of the thing lent resulting from its use in accordance with the contract.

ARTICLE 579

1. When the use of the thing let entails expenses by the borrower, he will not have the right to claim, he refund thereof. He is bound to pay the necessary expenses for the normal maintenance of the thing.
2. The borrower may remove any additions that he has made to the thing lent, provided that he reinstates the thing in its original condition.

ARTICLE 580

1. The borrower is bound to take such care for the preservation of the thing as a reasonable person would take.
2. The borrower is, in any event, responsible for the loss of the thing lent arising from a fortuitous event or force majeure if it was possible for him to avoid such loss by using his own property, or if he could only preserve his own property or the thing lent and he preferred to preserve his own property.

ARTICLE 581

1. The borrower must, at the end of the loan, restitute the thing received in its state at that time, without prejudice to his responsibility for loss or deterioration.
2. In the absence of an agreement to the contrary, the borrower must restitute the thing at the place that he received it,

ARTICLE 582

1. The loan for use comes to an end upon the expiration of the term agreed and, in default of such a term being fixed, when the thing has served the purpose for which it was lent.
2. If there is no way by which the term of the loan for use can be fixed, the lender may demand its termination at any time.
3. The borrower may, in all cases, restitute the thing lent before the end of the loan. If, however, such restitution is detrimental to the lender, he cannot be compelled to accept the thing.

ARTICLE 583

1. The lender may put an end to a loan for use at any time in the following cases:-

a. If the lender has suddenly an urgent an unforeseen need of the thing;

b. If the borrower uses the thing improperly or neglects to take the necessary precautions for its preservation

c. If the borrower becomes insolvent after the conclusion of the loan or if his insolvency before the conclusion of the loan was not known to the lender.

ARTICLE 584

In the absence of an agreement to the contrary, a loan for use ends with the death of the borrower.

PART THREE

CONTRACTS FOR HIRE OF SERVICES

CHAPTER ONE

CONTRACTS FOR WORK

SECTION ONE

GENERAL RULES OF CONTRACTS FOR WORK

ARTICLE 585

By a contract for work one of the contracting parties undertakes to do a piece of work or to perform a service inconsideration of remuneration which the other party undertakes to pay.

ARTICLE 586

1. The contractor may undertake to supply his work only and the employer must be responsible for the supply of materials, which the contractor uses in the performance of his work.
2. The contractor may also undertake to supply all or some of the materials as well as his work.

ARTICLE 587

When the contractor undertakes to supply the whole or part of the materials to be used in the work, he is responsible for and warrants their good quality to the master.

ARTICLE 588

1. When the materials are supplied by the master, the contractor is bound to care for their preservation, to use them with technical skill, to account to the master for their use in the work and return to him any such materials that remain. If part of the material, becomes unfit for use owing to the contractor's neglect or lack of professional skill, the contractor is bound to refund to the master the value thereof.
2. In the absence of an agreement or trade custom to the contrary, the contractor shall provide, at his own expense, the tool, and accessory appliances necessary for the performance of the work.

ARTICLE 589

1. Where, during the progress of the work, it appears that the contractor is performing the work in a defective manner or in breach of the contract; the employer may notify the contractor to correct the method of performance within such reasonable time as determined by the employer. Where such period expires without remedy of such breach, the employer may demand termination of the contract or obtain a license from the court to perform the work at the cost of the contractor if the nature of the work so permits, according to article 206.
2. The employer may demand termination of the contract without notice or time limit if the correction or remedy of the breach is impossible.

ARTICLE 590

1. The architect and contractor are jointly and severally responsible for a period of ten years for total or partial demolition of constructions or other permanent works, prepared by them, even if such destruction is due to defect in the ground itself, and even, if the master authorized the erection of the defective construction, unless in this case the constructions were intended by the parties to last for less than ten years.

2. The warranty imposed by the preceding paragraph extends to defects in construction and erections, which endanger the solidity and security of the works.
3. The period of ten years runs from the date of delivering of the works.
4. This article does not apply to the rights of actions which a contractor may have against his sub-contractor.

ARTICLE 591

An architect, who only undertakes to prepare the plan, without being entrusted with the supervision of their execution, is responsible only for defect, resulting from his plan.

ARTICLE 592

Any clause tending to exclude or restrict the warranty of the architect and the contractor is void.

ARTICLE 593

Actions on the warranties above referred to are prescribed after three years, from the date of the destruction of the work, or the discovery, of the defect.

OBLIGATIONS OF THE MASTER

ARTICLE 594

When the contractor completes the works and place, them at the master's, disposal, and the master shall, as soon as possible take delivery in accordance with prevailing custom. When the master in spite of being formally summoned, fails, without reasonable cause, to take delivery of the works, the work, will be deemed to have been delivered to him.

ARTICLE 595

In the absence of custom or an agreement to the contrary the price is payable upon delivery of the works.

ARTICLE 596

When the price has not been fixed in advance, it must be calculated according to the value of the work and the expenses of the contractor.

ARTICLE 597

1. An architect is entitled to a separate fee for the preparation of the plans and specifications and another for the supervision of the work.
2. If these fees are not specified in the contract they shall be fixed according to the prevailing custom.
3. If, however, the work is not completed in conformity with the plans prepared by the architect, the fee shall be assessed on the basis of the time taken in their preparation, taking into consideration the nature of the work.

ARTICLE 598

1. A contractor may entrust the execution of the whole or part of the work to a sub-contractor, unless he is precluded from so doing by a clause in the contract, or unless the nature of the work presupposes reliance on his personal skill.
2. In such a case the contractor remains responsible to the master for his sub-contractor.

ARTICLE 599

1. Sub -contractors and workmen working for a contractor in the execution of a contract have a direct right of action against the master but only to the extent of such sums as are due by the master to the main contractor on the dare that action is commenced. Workmen of sub-contractors likewise have the same right of action against the main contractor and the master.
2. In case of an attachment served by one of them upon the master or the main contractor, workmen have the right of privilege on the sums due to the main contractor or to the sub-contractor at the time of the attachment, in proportion to the amount due to each of them. These sums may be paid to them direct.
3. The rights of sub-contractors and workmen provided for in this Article have priority over those of a person to whom the contractor has assigned sums due to him by the master.

END OF CONTRACT FOR WORK

ARTICLE 600

1. A master may terminate the contract and stop the work at any time before the completion of the works, provided that he compensates the contractor for all expenses he has incurred, for the work that he has done and the profit that he would have made if he had completed the work.
2. The Court may, however, reduce the compensation due to the contractor for loss of profit if the circumstances justify such reduction, in particular, the Court shall deduct from such compensation any saving realized by the contractor as a result of the rescission of the contract by the master and any profit which the contractor could have made by employing his time otherwise.

ARTICLE 601

A contract for work comes to an end if the performance of the work for which the contract was concluded becomes impossible.

ARTICLE 602

1. When works are destroyed by fortuitous event, before delivery to the master, the contractor has no claim either for the price of his work or for reimbursement of his expenses. The loss falls on the party who supplied them.
2. When, however, the contractor fails to comply with a formal summons to deliver the works or when the works are destroyed or deteriorate before delivery, by the fault of the contractor, he is under a liability to indemnify the master for the materials supplied to carry out the works.
3. When the master is formally summoned to take delivery of the work, or when the works are delayed or deteriorate by the fault of the master or by reason of a defect in the materials supplied by him. The master shall beat the loss resulting from the destruction of the materials and is liable to the contractor for his remuneration in addition to such compensation as may be due.

ARTICLE 603

A contract for work is dissolved by the death of the contractor, if his personal skill was taken into account when the contract was concluded. If such personal skill was not taken into account, the contact is not ipso facto dissolved and the master may not, include in the article 601, can only terminate the contract, unless the contractor's heirs do not offer sufficient guarantee for the due performance of the work.

ARTICLE 604

1. When the contract is dissolved by the death of the contractor, the master is bound to pay to the contractor's estate the value of the work already done and expenses incurred for the execution of the work which has not been completed, to the extent of the benefit that he derives from such work and expenses.
2. The master may, on the other hand, demand delivery, against payment of a fair price, of the materials prepared and plans whose execution has been commenced.
3. These provisions also apply when the contractor who has commenced the work becomes unable to complete it owing to a cause beyond his control.

CHAPTER TWO

CONTRACTS OF SERVICE

ARTICLE 605

A contract of service is one whereby one of the contracting parties undertakes to work in the service and under the supervision or control of the other contracting party in consideration of a remuneration which such other party undertakes to pay.

ARTICLE 606

In respect of contracts of employment are regulated by special laws.

CHAPTER THREE

AGENCY

ARTICLE 607

Agency shall be defined as a contract under which the agent undertakes to do any legal act for the account of the principal.

ARTICLE 608

In the absence of any provision of the law to the contrary, an agency must be executed in the same form as that required for the execution of the legal act in respect of which the agency is given.

ARTICLE 609

1. An agency given in general terms, which does not specify the nature of the legal act in respect of which it's given, only confers on the agent the power to perform acts of management.
2. Granting of leases of not more than three years duration, acts of preservation and of maintenance, the recovery of rights and discharge of debts, are deemed acts of management. All acts of disposition necessary for management, as the sale of crops, goods or movables, and the purchase of things necessary for the preservation and exploitation of the thing constituting the object of the agency are deemed to be acts of management.

ARTICLE 610

1. A special agency, in respect of any act which is not an act of management, it required, and in particular for a sale, a mortgage, a gift, a compromise, an admission, an arbitration, the tendering of an oath and representation before the Courts.
2. A special agency to carry out a certain category of juridical acts is valid, save as regards gratuitous acts, even though the object of such acts is not specified.
3. A special agency only confers on the agent a power to act in matters specified therein and in matters necessarily incidental thereto in accordance with the nature of each matter and prevailing custom.

SECTION TWO

EFFECTS OF THE AGENCY

ARTICLE 611

1. The agent shall be bound by the agency contract without exceeding its limits.
2. The agent may exceed the limits of the agency contract where it is impossible to notify the principal in advance and the circumstances most probably indicate that the principal will have agreed to such act. In such event, the agent shall notify the principal of such excess.

ARTICLE 612

1. Where the agency contract is without consideration, the agent shall use the same standard of care as he would in his own acts, but not beyond that of a reasonable person.
2. Where the agency is with consideration, the agent shall use the care of a reasonable person at all times.

ARTICLE 613

The agent is bound to give to his principal all necessary information in connection with the execution of his agency and render him an account thereof.

ARTICLE 614

1. The agent may not use the property of the principal for his own benefit.
2. He is liable for Interest on sums used by him for his own benefit from the moment when he commences to use them. He is also liable for Interest on sums that he owes the principal from the time when he is served with a formal summons.

ARTICLE 615

1. Multiple agents shall be jointly liable where the agency is indivisible or where the damage suffered by the principal arises from a common mistake of the agents. However, the agents shall not be jointly liable for any act of each agent which exceeds the limits of or abuses the agency.

2. Where such agents are assigned under a single contract without any authority to act individually, they shall act jointly, unless the exchange of opinion such as receiving payment or paying a debt.

ARTICLE 616

1. Where an agent delegates a third party to perform the agency without authority to do so, the agent shall be liable for the act of such third party as if such act is the act of the agent himself. In such event, the agent and his delegate shall be jointly liable.
2. Where the agent is authorized to delegate performance of the agency but no delegate is designated, the agent shall be liable only for his mistake in nominating or giving instructions to the delegate.
3. In both events, the principal and the representative of the agent may have recourse against each other directly.

ARTICLE 617

1. The agency shall be without consideration unless otherwise agreed or unless otherwise implicitly understood by the agent.
2. Where the parties agree on a fee, such fee shall be assessed at the discretion of the court, unless voluntarily paid by the principal upon the performance of the agency.

ARTICLE 618

The principal shall reimburse the agent all costs incurred by him in the normal performance of the agency. Where performance of the agency requires that the principal provide to the agent amounts to be spent on the affairs of the agency, the principal shall provide such amounts on demand by the agent.

ARTICLE 619

The principal shall be liable for any damage suffered by the agent in the normal performance of the agency, excluding damage arising from the agent's mistakes.

ARTICLE 620

Where more than one principal appoints a single agent to perform a common act, all such principals shall be jointly liable against the agent for the performance of the agency, unless agreed otherwise.

ARTICLE 621

The provisions of Articles 103 to 106 herein concerning representation in contracts shall apply to the relationship between the principal and the agent with third parties dealing with such agent.

SECTION THREE

TERMINATION OF AGENCY

ARTICLE 622

The agency shall terminate upon the completion of the acts described therein or upon the expiry of its term. The agency shall also terminate on the death of the agent or the principal.

ARTICLE 623

1. The principal may at any time terminate or limit the agency, even if there is an agreement to the contrary. In all events, if the agency is with consideration, the principal shall indemnify the agent for any damage suffered by the agent due to his removal at any improper time or without good cause.
2. However, where the agency is issued in favour of the agent or a third party, the principal may not terminate or limit such agency without the consent of such agent or third party.

ARTICLE 624

1. The agent may at any time withdraw from the agency, even if there is an agreement to the contrary, by giving notice to the principal. If the agency with consideration, the agent shall be obligated to indemnify the principal against any damage suffered by the principal due to such withdrawal at any improper time or without good cause.
2. Unless he has compelling reasons, the agent may not withdraw from the agency if a third party has an interest therein, provided that such third party shall be notified of such withdrawal in order to give him adequate time to decide what is in his best interest.

ARTICLE 625

1. Irrespective of the manner of termination of the agency, the agent shall complete the acts commenced to such stage where no damage may be suffered by the principal.
2. Where the agency is terminated due to the death of the agent, his heirs shall, provided that they have the capacity and are aware of the existence of the agency, notify the principal of such death or take such appropriate steps on behalf of the principal.

CHAPTER FOUR

DEPOSIT

ARTICLE 626

Deposit is a contract whereby one person agrees to take delivery from another person of a thing which he undertakes to keep in safe custody and return in kind.

THE OBLIGATIONS OF THE DEPOSITORY

ARTICLE 627

1. The depository is bound to take delivery of the thing deposited.
2. He is not entitled to make use of the thing deposited without the express or implied authority of the depositor.

ARTICLE 628

1. Where the deposited thing is without consideration, the depositee shall use the same care as in his own acts, but not beyond the care of a reasonable person.
2. Where the deposited thing is with consideration, the depositee shall use the care of a reasonable person at all times.

ARTICLE 629

The depositee may not, without the consent of the depositor, delegate any other person to safe keep the deposited thing, unless due to urgent necessity.

ARTICLE 630

The depository is bound to return the thing deposited and deliver it to the depositor, when the depositor demanded so, unless the contract includes a condition stipulated in the interest of both parties to the contract, or one of them, and in this case the condition required should be observed.

ARTICLE 631

When the heir of a depository sells the thing deposited in good faith, he is only liable to refund to the owner the price which he has received or to assign to the owner his rights against the purchaser. If the disposal was gratuitous, he is liable to pay the value of the thing deposited at the time of disposal.

ARTICLE 632

A deposit is deemed to be gratuitous. When, however, remuneration is stipulated, the depositor, in the absence of agreement to the contrary, is bound to pay such remuneration at the time the deposit ends unless there is agreement or custom to the contrary.

ARTICLE 633

The depositor must repay the depository any expenses incurred for the preservation of the thing deposited and indemnify him against any loss he may incur as a result of the deposit.

CHAPTER FIVE

JUDICIAL CUSTODY

ARTICLE 634

Custodianship shall be defined as a contract under which the concerned parties assign to another person a disputed movable asset, real property, or combination thereof for safekeeping and subsequent return, together with its revenues, to the party for whom the right is established.

ARTICLE 635

The court may order appointment of a custodian:

1. In any of the events set forth in the preceding Article, unless the concerned parties mutually agree on a custodian.
2. Where the holder of an interest in a movable asset or real property has good cause to fear imminent risk of loss or damage to it, if it remains in the possession of the assigned person.
3. In other cases provided for by the law.

ARTICLE 636

Whether custodianship is consensual or judicial, the custodian shall be appointed by the unanimous agreement of all concerned parties. In the event of disagreement, the court shall appoint such custodian.

ARTICLE 637

The agreement or judgment appointing the custodian shall determine the rights, powers and obligations of the custodian, otherwise the provisions of deposit and agency shall apply to the extent not in conflict with the provisions of the following Articles.

ARTICLE 638

1. The custodian shall maintain the asset or property in his custody and management and shall use the care of a reasonable person in so doing.
2. The custodian may not delegate any of his powers to any of the concerned parties without the consent of the other parties.

ARTICLE 639

The custodian may not, other than as required for management, perform any act without the unanimous agreement of all the concerned parties or under a court order.

ARTICLE 640

A custodian may be remunerated unless he has renounced all remuneration.

ARTICLE 641

1. Custodianship shall terminate by unanimous agreement of the concerned parties or by court order.
2. In such event, the custodian shall return the asset in his custody to any person nominated by the concerned parties or determined by the court.

PART FOUR

ALEATORY CONTRACTS

CHAPTER ONE

GAMING AND BETTING

ARTICLE 642

1. Any agreement on gambling or wager shall be void.
2. Any person who loses a bet or wager may recover such loss within three years from the time of suffering such loss, even if agreed otherwise; such person may prove such loss by all methods.

ARTICLE 643

1. Bets relating to sports, even among those not competing therein, are excluded from the provisions of the preceding Article. The judge may reduce if the price is high.
2. Legally authorized lotteries are also excluded.

CHAPTER TWO

INSURANCE

ARTICLE 644

Insurance is a contract whereby the insured undertakes to pay to the insured or the beneficiary a sum of money or a salary or any other financial consideration in case of the occurrence of an accident or realisation of the risk indicated in the contract. Such contract shall be made against payment of a cash consideration by the insured to the insurer.

ARTICLE 645

The provisions relating to the insurance contracts that are not dealt with in this Law shall be regulated by special laws.

ARTICLE 646

Any lawful economic interest which a person may have in the non-occurrence of a specified risk may be the subject of insurance.

ARTICLE 647

The following conditions in a policy of insurance are void:

1. A condition providing for the forfeiture of the right to the benefit of the insurance on account of a breach of the law or of regulations, unless such breach constitutes a crime or a deliberate misdemeanour;
2. A condition providing for the forfeiture of the rights of the assured on account of his delay in notifying the authorities of the occurrence or the risk insured or in producing documents, if it appears from the circumstances that there was a reasonable excuse for the delay;
3. Any printed condition relating to cases involving nullity or forfeiture, which is not shown in a clear manner;
4. An arbitration condition included in the general printed conditions of the policy and not as a special agreement distinct from the general conditions;
5. Any other clause of an arbitrary nature, the breach whereof appears to have no bearing on the occurrence of the event insured against.

ARTICLE 648

The insurer shall only be bound to indemnify the assured for the actual loss arising as a result of the occurrence insured against, to the extent of the amount insured.

ARTICLE 649

1. Actions arising out of insurance contracts shall be barred by limitation after the expiration of three years from the date of the occurrence which gave rise to such actions.
2. This period, however, shall only run :

a. In the event of concealment of particulars or of a false or inexact declaration of particulars, in respect of the risk insured against from the day when the insurer had knowledge thereof.

b. In the event of the occurrence of the risk insured against, from the date when the interested parties had knowledge.

ARTICLE 650

Any agreement contrary to the provisions of this chapter shall be void, unless such agreement is in favour of the assured or beneficiary, according to the article 646.

PART FIVE

SURETSHIP

CHAPTER ONE

ELEMENTS OF SURETYSHIP

ARTICLE 651

A guarantee shall be defined as a contract under which a person undertakes to the creditor to accept responsibility for the performance of an obligation by the debtor where the debtor fails to perform such obligation.

ARTICLE 652

A guarantee shall be made in writing, even if the original obligation may be established by evidence.

ARTICLE 653

When a debtor undertakes to offer a surety, he is bound to produce a solvent person residing in Somalia or an adequate real security instead of the surety.

ARTICLE 654

Surety ship may be given without the knowledge and even in spite of the opposition of the debtor.

ARTICLE 655

Surety ship is valid only if the obligation to which it applies is valid.

ARTICLE 656

When a person guarantees the obligation of a debtor who Is legally Incapable and such guarantee is given because of the debtor's lack of capacity, the surety is bound to perform the obligation if the guaranteed debtor fails to do so himself.

ARTICLE 657

1. Surety ship may be entered into in respect of a future debt. If the amount for which the guarantee is given or fixed beforehand. Surety ship may also be entered into in respect of a conditional liability.
2. A surety, however, who has given his guarantee for a future debt, but has not fixed the duration of such guarantee, may revoke his guarantee at any time provided that the guaranteed debt has not been created.

ARTICLE 658

1. Surety ship entered into in respect of a commercial debt is deemed to be a civil act, even if the surety is a trader.
2. The surety ship resulting from backers' signatures and endorsements on negotiable instruments is always deemed to be a commercial act.

ARTICLE 659

1. Surety ship cannot be entered into in respect of a sum greater than that due by the debtor, nor can it be subject to more onerous conditions than the debt guaranteed.
2. Surety ship may be entered into in respect of a smaller sum and subject to less onerous conditions.

ARTICLE 660

In the absence of an express agreement, surety ship extends to the accessories of the debt, to the expenses of the first demand, for payment and to the expenses incurred after notice has been given to the surety.

CHAPTER TWO

THE EFFECTS OF SURETY

THE RELATIONSHIPBETWEEN SURETY AND CREDITOR

ARTICLE 661

1. A surety is discharged simultaneously with the debtor and is entitled to avail himself of all the defences that are open to the debtor.
2. When, however, the defence raised by the debtor is based on his lack of legal capacity, the surety who was cognisant thereof at the time the contract was entered into is not entitled to raise this defence

ARTICLE 662

When the creditor has accepted a thing of another kind in payment of the debt, the surety is discharged, even if the thing given in payment it revendicated.

ARTICLE 663

1. A surety is discharged to the extent of the value of any warranties which the creditor has lost by his own fault.
2. The warranties referred to in this Article are the securities assigned to guarantee the debt, even if they were provided after the surety ship was entered into; also any securities provided in accordance with the law.

ARTICLE 664

1. A surety is not discharged merely by reason of the creditor's delay in taking proceedings or of the creditor not taking proceedings.
2. A surety is however, discharged if the creditor does not take proceedings against the debtor within six months from the date of the summons served on him by the surety, unless the debtor himself provides an adequate guarantee to the surety.

ARTICLE 665

When a debtor becomes bankrupt, the creditor is bound to prove his debt in the bankruptcy, under penalty of being deprived of his remedy against the surety to the extent of the loss suffered by the surety as a result of the creditor's failure to prove his debt.

ARTICLE 666

1. A creditor is bound to hand over to the surety, at the time of the discharge of the debt, all documents that are necessary to enable him to exercise his right of action.
2. When the debt is secured by a pledge of a movable or by a right of retention on a movable, the creditor must surrender such securities to the surety.
3. When, however, the debt is secured by a charge on Immovable property, the creditor must comply with the formalities required for the transfer of such security. The expenses of such transfer are borne by the surety, subject to his right of action against the debtor.

ARTICLE 667

1. A creditor has not the right to take proceedings against the surety alone, unless he has first taken proceedings against the debtor.
2. He can only levy execution on the property of the surety after he has distrained all the property of the debtor; it is for the surety, in such a case, to claim this right.

ARTICLE 668

1. Where the guarantor demands depletion of the assets of the debtor, the guarantor shall, at its own expense, direct the creditor to those assets of the debtor that may settle the debt in full.
2. No assets that the guarantor may indicate shall be effective if the disputed assets are outside of the Somali republic of Somalia.

ARTICLE 669

in all the cases where the surety has indicated property belonging to the debtor, the surety will be discharged of liability to the extent of the debt that the creditor has been unable to recover from the debtor for failing to take the necessary proceedings in due time.

ARTICLE 670

When a real security is assigned as guarantee of a debt, and suretyship is also entered into subsequently or at the same time, without a stipulation that the surety is jointly and severally liable with the debtor, the surety's property can only be seized after the real security assigned as guarantee has been realised.

ARTICLE 671

1. When there are several sureties for the same debt by one contract and it does not provide for their joint and several liability, the debt is apportioned between them and the creditor has only a right of action against each of the sureties to the extent of his share in the surety ship,
2. If several sureties have undertaken to guarantee the same debt by successive contracts, each surety is liable for the whole debt, unless he has reserved the right to apportion the liability amongst the co-sureties.

ARTICLE 672

A surety who has jointly and severally guaranteed with the debtor cannot demand that the debtor's property first be distrained.

ARTICLE 673

A surety who has jointly and severally guaranteed the debtor may avail himself of all the defences which a. surety who is not jointly and severally liable may invoke with regard to the debt.

ARTICLE 674

Judicial and legal sureties are always jointly and severally liable.

ARTICLE 675

When there are several sureties jointly and severally liable, a surety who has paid the whole debt on maturity may call upon each of the other sureties to pay his share of the debt as well as a proportional part in the share of any joint and several sureties who are insolvent.

ARTICLE 676

A surety may be guaranteed by another surety, in such a case the creditor may not call upon the principal surety’s guarantee until he has taken action against the principal surety, unless the two sureties are themselves jointly and severally liable.

THE RELATIONSHIP BETWEEN THE SURETY AND THE DEBTOR

ARTICLE 677

1. The surety shall notify the debtor prior to the payment of the debt, failing which the surety shall lose his right of recourse against the debtor if the debtor has settled the debt or has such reasons on the maturity date to believe that the debt is invalid.
2. Where the debtor has not objected to the payment, the surety shall have the right of recourse against the debtor, even if the debtor has paid the debt or has such reasons on the maturity date to believe that the debt is invalid or extinguished.

ARTICLE 678

A surety who has paid the debt Is subrogated to all the rights of the creditor against the debtor; If, however, he pays only part of the debt, the surety can only exercise such rights in respect of that part he has paid after the creditor has recovered from The debtor the whole of the debt due.

ARTICLE 679

1. A surety who has paid the debt has a right of action against the debtor whether the surety ship was entered into with or without the knowledge of the debtor.
2. This right of action includes the right to claim the capital amount of the debt, interest and expenses. The surety, however, only has a right of action- in respect of those expenses which he has incurred from the date he has notified the principal debtor of the proceedings taken against him.
3. A surety is entitled to interest at the legal rate on all amounts that he has paid from the date of payment.

ARTICLE 680

When there are several debtors jointly and severally liable for one and the same debt, a surety who has guaranteed them all, has a remedy against each of them for all that he has paid in respect of the debt.

SECOND PART

REAL RIGHTS

BOOK THREE

THE PRINCIPAL OF REAL RIGHTS

PART ONE

THE RIGHT OF OWNERSHIP

CHAPTER ONE

THE RIGHT OF OWNERSHIP IN GENERAL

SECTION ONE

SCOPE OF THE RIGHT OF OWNERSHIP

ARTICLE 681

1. The owner of a thing has alone, within the limits of the law, the right to use, to enjoy and to dispose of it, after taking into account the obligations imposed by law.
2. The owner of the things used in production must take into account in their exploitation of the higher interests of the group and the goals of the national economy, the administrative authority may, upon breach of this duty, oblige the owner to abide appropriate directives, and it may, upon serious violations, administer the property temporarily forcibly or expropriate it in return for a fair compensation.
3. In cases other than those stipulated in the previous paragraph, the administrative authority may allocate property for the public benefit, or seize things for a public and urgent need in accordance with the provisions specified by special laws, and the owner always has the right to a fair compensation.

ARTICLE 682

1. The owner of a thing also owns everything that constitutes an essential element of the thing owned and which cannot be separated there from without the thing owned perishing, deteriorating or changing.

2. The ownership of the surface of land includes that which is above and below, as far as it can be usefully enjoyed in height and depth, subject to special laws concerning quarries and mines.
3. The ownership of the surface of land may, by law or by agreement, be separated from the ownership of what is above or below it.

ARTICLE 683

The owner must, in the exercise of his right, comply with laws, decrees, and regulations, having for their object, the interest of the public and of individuals; it must also observe the following provisions.

ARTICLE 684

1. The owner shall not abuse his right to such extent that may cause damage to a neighbouring property.
2. A neighbour may not demand that his neighbour indemnify such shared damage that cannot be avoided, but such neighbour may demand that the damage be remedied to the extent in excess of the shared limit, taking into account the applicable practice, the nature of the real estate, the location of each real property in connection with the other, and the purpose which it is allocated. The license issued by the competent authorities does not prevent the use of this right.

ARTICLE 685

An owner must allow passage through his land of the water necessary for the irrigation of land situate at distance from the source of the water.

ARTICLE 686

1. Where the owner of land without access to a public road or with insufficient access thereto is unable to gain access to it without incurring high costs or experiencing considerable difficulty, such owner shall, in consideration of a fair compensation, have the right of passage in the neighbouring lands to such extent as required to use the land in a shared manner, as long as the land is not accessible through the public road. Such right may not be exercised other than in such real property where access shall cause the least damage and through such location that may achieve this.

2. However, if such inaccessibility to the public road arises from the division of a real property on the basis of a legal act and an adequate passage can be made in parts, no right of passage may be claimed other than in those parts.

ARTICLE 687

Any owner may force his neighbour to demarcate the boundaries of their adjacent properties. Both owners shall bear the costs of demarcation equally.

ARTICLE 688

1. The owner of a common wall may use it for the intended purpose and may rest the ceiling on such wall without overloading it.
2. Where the common wall is not fit for its intended purpose, the cost of its repair or refurbishment shall be borne by the partners pro rata to their respective shares.

ARTICLE 689

1. The owner may raise a common wall where there is a compelling interest in doing so, provided that no gross damage is sustained by the other partner. Only the owner erecting the wall shall bear the costs of raising and maintaining the wall, and he shall ensure its construction is sufficient to render it sound.
2. Where the wall cannot bear any additional height, any of the partners may rebuild the wall at his cost and in such manner that any additional thickness shall be made from the side of the partner who initiated the wall's construction. The rebuilt wall, excluding the raised part, shall remain common, without any right of indemnity to the neighbour who raised the wall.

ARTICLE 690

A neighbour who has not contributed to the costs of the raised wall may become a partner in the raised part if he pays fifty (50) percent of such costs and fifty (50) percent of the value of the land where such additional thickness, if any additional, is made.

ARTICLE 691

Unless evidence to the contrary is presented, a wall separating two buildings at the time of its construction shall be deemed common to both.

ARTICLE 692

1. A neighbour may not force his neighbour to build a wall around his wall or to waive part of the wall or the land on which the wall is built, other than where provided by the article 690.
2. However, the owner of a wall may not demolish it voluntarily without good cause, if such demolition may cause damage to a neighbour whose property lies behind such wall.

ARTICLE 693

1. A neighbour is not entitled to have a direct view over his neighbour at a distance of less than one metre. This distance is measured from the outside face of the wall in which the opening is made or from the outside line of the balcony or other projection.
2. If a direct view has been acquired by prescription of a distance of less than one metre over the property of a neighbour, such neighbour cannot himself build at a distance of less than one metre, measured in the manner indicated above, and that along the building in which the view was opened.

ARTICLE 694

A neighbour is not entitled to have an oblique view over the property of his neighbour at a distance less than fifty centimetres from the outside of the opening. This prohibition ceases to have effect, if the oblique view over the neighbouring property is at the same time a direct view over a public road.

ARTICLE 695

No distance is laid down for an opening for a light shaft if the base of the opening is above the limit of the normal height of a man and if the opening is intended only for air and light and cannot give a view over the neighbouring property.

ARTICLE 696

1. Where the contract or testament includes a condition not to dispose of a property, such condition shall not be valid unless based on lawful motive and limited to a reasonable period of time.

2. A motive may be lawful if such prevention of disposal is intended to protect a lawful interest of the disposer, or of the person disposed to, or of a third party.
3. A reasonable time may be, during the lifetime of the disposer or of the person disposed to, or of a third party.

ARTICLE 697

When the clause of preventing disposition which is in the contract or in the will is valid in accordance with the provisions of the preceding article, any disposition contrary to such a clause is void.

JOINT OWNERSHIP

ARTICLE 698

When two or more persons are owners of the same thing but their respective shares are not divided, they are co-owners and, in the absence of proof to the contrary, their shares are deemed to be equal.

ARTICLE 699

1. Any partner in common shall hold his share in full and shall have the right to use such share and dispose thereof, provided that no damage is incurred by the other partners.
2. Where such disposal is based on a divided part of the property held in common, and at the time of division such part is not within the share of the holder, the right of the buyer at the time of such disposal shall be transferred to such part allocated to the holder by division. The buyer shall be entitled to annul the disposal if such buyer has no knowledge that the holder is not the owner of the divided share.

ARTICLE 700

All the partners shall have the right to manage the property held in common, unless agreed otherwise.

ARTICLE 701

1. A decision taken by the majority of co-owners as to ordinary acts of management is binding on all of them. The majority shall be calculated on the basis of the value of the shares, if there no majority the Court may, upon the application of any one of the co-owners, take such measures as may be necessary in the circumstances and appoint if needed someone who manage the property owned in common.
2. The majority may select a manager and may also establish rules for the management and for good use of the property owned in common, which rules shall also be binding upon the successors in title of all the co-owners whether such successors in title are universal or particular.
3. A co-owner who conducts the management of the joint property without any objection being raised by the other co-owners is considered to be their agent.

ARTICLE 702

1. Co-owners who possess at least three quarters of the property in common may decide, with a view to obtain greater enjoyment of the property, to make essential modifications or changes, in the use for which the property was intended, which exceed the normal scope of management, provided that these decisions are notified to the other co-owners. Dissenting co-owners have a right of action in the Courts within two months from the date of notification.
2. The Court before such an action is brought May, if it approves the decision taken by the majority, also order measures of expediency. The Court may, in particular order that security be given to the dissenting co-owner so as to guarantee any compensation that may become due to him.

ARTICLE 703

Every co-owner may also, even without the consent of the other co-owners, take measures necessary for the preservation of the property in common.

ARTICLE 704

In the absence of any provisions to the contrary, the cost of the management of a property held in common, as well as the cost of its preservation, the taxes payable thereon, and all other charges resulting from the common holding or connected with the property held in common, shall be borne by all the co-owners each proportionately to his share.

ARTICLE 705

Co-owners who possess three quarters at least of the property held in common may decide to alienate the property, provided that their decision is founded on reasonable grounds and that the decision is notified to the other co-owners. A dissenting co-owner has a right of action before the Court within a delay of two months from the date of notification. The Court will decide, in accordance with the circumstances in a case where the partition of the property held in common is contrary to the interests of the co-owners, and to assess, according to the circumstances, whether the actions should be carried out.

ARTICLE 706

1. A co-owner of a movable or of a property consisting of movables and immovable may, before partition, repurchase an undivided share which has been sold by another co-owner to a third person. Such repurchase must be sold by another co-owner to a third person. Such repurchase must be made within thirty days from the day on which he had knowledge of sale or from the day on which the sale was notified to him. The right of repurchase is exercised by means of a summons notified by a registered letter with a note of delivery to both the vendor and the purchaser. The co-owner who has repurchased the share sold will be subrogated into all the rights and obligations of the purchaser if he compensates him for all that he has spent.
2. If several co-owners exercise their right to repurchase, each of them shall have the right to repurchase a part proportional to his share.

CESSATION OF JOINT OWNERSHIP

ARTICLE 707

1. Every co-owner may demand the partition of property held in common, unless he is bound to remain a co-owner in common by reason of a provision of the law or of an agreement. It is not permitted, by a legal disposal, to prohibit partition for a period exceeding five years. When the period stipulated does not exceed five years the agreement shall bind a co-owner and his successors in title.

ARTICLE 708

Co-owners may, if they are all in agreement, divide the property held in common in whatever manner they deem fit. If one of them is subject to legal incapacity, the formalities laid down by law will have to be observed.

ARTICLE 709

1. If the co-owners do not agree to partition of the property held in common then, any co-owner desiring partition have recourse to the Court demanding that the same be made in accordance with the provisions of the law.
2. The court may in its sole discretion appoint one or more experts to assess the common property and to divide the shares, if the property is divisible in kind, without a considerable decrease in its value.

ARTICLE 710

When a property cannot be divided in kind or when such partition involves a serious diminution in the value of the property, the Court shall order the sale thereof by auction in the manner laid down by the Civil and Commercial Procedures Act. The sale by auction will be restricted to the co-owners in common if they ask for it unanimously.

ARTICLE 711

1. The personal creditors of any co-owner may oppose a partition in kind or a sale by auction without their intervention in the proceedings, such opposition must be notified to all the co- owners and has the effect of compelling the co-owners to join the opposing creditors in every stage of the proceedings, otherwise the partition will be without effect as regards such opposing creditors. In any case, creditors must be joined before an action for partition is introduced.

2. If the partition has already taken place, the creditors who have not intervened cannot attack it, unless there has been fraud.

ARTICLE 712

Each co-owner is deemed to have been owner of the part of the property that falls to him from the day that he became co-owner in common and never to have been owner of the other parts.

ARTICLE 713

1. The co-partitioners warrant each other against interference due to a cause that existed previous to the partition. Each one of them is liable, in proportion to his share in indemnifying a co-partitioner entitled to such indemnity, on the basis of the value of the property at the moment of partition. If one of the co-partitioners happens to be insolvent, the share falling on him will be borne by the co-partitioner entitled to the indemnity and all the solvent co-partitioners.
2. No such warranty however, exists when there is an express agreement waiving the warranty in the particular case which would have given rise to the warranty. The warranty also ceases to be binding if the interference is due to a fault of the co-partitioner himself.

ARTICLE 714

1. Partition by agreement may be rescinded if one of the co-partitioners succeeds in proving that he has been injured to the extent of more than one- fifth of his share, on the basis of the value of the property at the time of partition.
2. The action for rescission must be commenced within the year following the partition. The defendant can stop the action and prevent the new partition by giving the plaintiff the amount by which his share is short in money or in kind.

ARTICLE 715

1. By a provisional partition, co-owners agree to allot to each other the enjoyment of a divided part of the property equal to each of their shares in the property held in common in consideration of a renunciation in favour of each other of the right of enjoyment of the other parts, such an agreement cannot be entered into a duration of more than five years, Such duration can only be renewed by another independent agreement.

If no duration has been fixed, or the agreed period has expired and no new agreement has been entered into, the period of the provisional partition will be for a year renewable, unless one of the co-owners gives a notice of termination to his co-owners three months before the end of the current year.

2. If such a provisional partition remains in force for fifteen years it is converted into a final partition, unless otherwise agreed by the co-owners. If one of the co-owners remains in possession of a divided share for fifteen years, such possession is presumed to have taken place as a result of a provisional partition.

ARTICLE 716

A provisional partition is governed, as regards its validity against third parties, the capacity of co-partitioners, their rights and obligations, and means of proof, by the provisions of the law relating to contracts of lease, as long as these provisions do not contradict the nature of such partition.

ARTICLE 717

1. The co-owners may agree, during the process of a final partition, to enter into a provisional partition. Such provisional partition will remain in force until the conclusion of the final partition.
2. If the co-owners cannot reach an agreement for a provisional partition, such a partition may, upon the application of one of the co-owners, be ordered by the competent Judge upon the advice of an expert if necessary.

OBLIGATORY JOINT OWNERSHIP

ARTICLE 718

The co-owners of a property held in common cannot demand its partition if it follows, from the use to which the property is intended, that it should always remain in common, likewise, he may not dispose of his share in a manner that is contrary to the object thereof.

CHAPTER TWO

ACQUISITION OF OWNERSHIP

SECTION ONE

ACQUISITION OF A MOVABLE BY APPROPRIATION

ARTICLE 719

Whoever takes possession of a movable which has no owner, with the intention of its appropriation, acquires the ownership thereof.

ARTICLE 720

1. A movable is deemed to have no owner when its owner abandons possession of it with the intention of renouncing the ownership thereto.
2. Animals, other than domestic animals, are deemed to have no owner as long as they are at liberty. If one of such animals, after losing its liberty, regains its freedom, it becomes without an owner if the owner does not seek for it immediately or ceases to seek for it. An animal that has become tame and is accustomed to return to the same place becomes again without an owner if it loses this habit.

ARTICLE 721

1. Buried or hidden treasure, to which no one can establish ownership, belongs to the bare owner of the property, on which it's discovered.
2. In the absence of any provision to the contrary, treasure discovered on awqaf property belongs to the founder of awqaf or his heirs.

ARTICLE 722

Rights of fishing and hunting and rights to things found and to antiquities are governed by special legislation.

ARTICLE 723

1. Uncultivated land which has no owner is the property of the State.
2. The appropriation or the possession of uncultivated land can only be effected with the authority of the State in accordance with the regulations.

ARTICLE 724

The establishment of the heirs, determination of their inheritance, transfer of the estate property to them, all that is governed by personal status law.

ARTICLE 725

If the deceased did not appoint a trustee for his inheritance and one of the concerned parties requested the appointment of a liquidator for it, the court shall appoint, if it deems necessary the one who agrees the heirs to choose. If the heirs did not agree with anyone, the judge would choose the liquidator, provided that he should be as much as possible from among the heirs and that after hearing their views.

ARTICLE 726

Wills are governed by personal status law.

ARTICLE 727

1. Every legal disposition made by a person during an illness immediately preceding his death, with an object of making a gift, is deemed to be testamentary disposition and must be governed by the rules applicable to wills, no matter what description has been given to such an act.
2. The heirs of the person who has made such a legal disposition are the persons on whom falls the onus of proving that it was made by the deceased during an illness immediately preceding his death, this proof may be tendered in any way, and the date of the legal instrument establishing, the disposition, cannot be invoked against the heirs, unless it's an established date.
3. If the heirs established that the legal disposition was made by the deceased during an illness immediately preceding his death, the act is deemed to be a gift unless the beneficiary proves that the contrary was the case, the above provisions are subject to any special provisions to the contrary.

ARTICLE 728

To the absence of any evidence to the contrary, when a person disposes of a property in favour of one of the heirs reserving at the same time in the same manner the possession and the enjoyment of the property so disposed of during his lifetime, the disposition is deemed to be a testamentary disposition and governed by the rules applicable to wills.

AQUISITION BY ACCESSION

THE RIGHT OF ACCESSION IN RESPECT OF IMMOVABLE PROPERTY

ARTICLE 729

The land formed gradually and imperceptibly by the river belongs to the riparian owners.

ARTICLE 730

1. Land uncovered by the sea belongs to the State.
2. No one may encroach upon the seashore except for the purpose of restoring the boundaries of his property which has been covered by the sea.

ARTICLE 731

Owners of lands adjoining still waters, such as lakes and ponds, do not acquire ownership over land uncovered by the retreat of these waters, and they do not lose their ownership over land which such waters overflow.

ARTICLE 732

1. All buildings, plantations, and other works existing above or below ground are deemed to have been earned out by the owner of the land at his own expense and belong to him.
2. It may be proved, however, that such works were made by a third party at his own expense, as it may also be proved that the owner of the land has transferred the ownership of works already existing or the right to erect and own such works to a third party.

ARTICLE 733

1. Constructions, plantations, and other works carried out with materials belonging to another, become the exclusive property of the owner of the land when the removal of these materials is not possible without seriously damaging the works, or even when it is possible to do so but proceedings to recover the property are not commenced within a year from the date on which the owner of the materials knew of their incorporation in the works.
2. When the owner of the land acquires the property of the materials, he must pay their value together with an indemnity, if an indemnity is due. When, however, the owner of the materials recovers the materials, their removal must be affected at the cost of the owner of the land.

ARTICLE 734

1. When a third party carries out works with his own materials on land which he knows is not his own property, without the consent of the owner of the land, the owner of the land may, within a year from the day on which he learns of the execution of the works, demand either their removal at the cost of the third party who erected them, together with an indemnity, if indemnity is due, or their retention against payment of their breakup value or of a sum equal to the increased value they have given to the land.
2. A third party who carries out the works may claim the right to remove them if he does not cause any damage to the land in so doing, unless the owner of the land chooses to keep the works in accordance with the provisions of the preceding Article.

ARTICLE 735

1. Where a person who builds constructions as provided for in the preceding Article believes in good faith that he has the right to do so, the owner of the land may not demand their removal but shall have the option to pay the value of the materials and the labour wages or to pay any increased value in the land due to such constructions.

2. However, if such constructions are so large that the owner of the land cannot afford either of the payments described above, he may demand transfer of the title to the land to the owner of the new constructions in consideration of a fair compensation.

ARTICLE 736

If a third party carries out works with his own materials, with the permission of the owner of the land. The owner of the land cannot, in the absence of an agreement with regard to these works, demand their removal, the owner of the land must pay to the third party, if the third party does not himself, ask for their removal, one of the two amounts laid down in the first paragraph of the preceding Article.

ARTICLE 737

The provisions of Article 789 apply as regards payment of compensation referred to in the three preceding Articles.

ARTICLE 738

If an owner of a land, while constructing of a building on it, encroaches in good faith on part of an adjoining land, the Court may, within its discretion, compel the owner of the adjoining land to transfer to his neighbour the ownership of that party which is occupied by the building, against payment of adequate compensation.

ARTICLE 739

Light constructions, such as sheds, shops, and shelters, erected on the land of another, which are not intended to be maintained permanently, shall be the property of the person who erects them.

ARTICLE 740

If a third party carries out works with materials belonging to another party, the owner of the materials cannot claim their restitution but he has a claim for compensation against the third party, and also against the owner of the land up to the amount remaining due by him in respect of the value of the work.

THE RIGHT OF ACCESSION IN RESPECT OF MOVABLE PROPERTY

ARTICLE 741

When two movables belonging to two different owners become mingled in such a way that they cannot be separated without deterioration, the Court, in the absence of any agreement between the two owners shall decide the matter in accordance with the rules of equity, having regard to the damage already done, the circumstances and the good faith of each of the two parties.

THE CONTRACT

ARTICLE 742

The ownership of movables and immovable and other real rights are transferred by contract, when the contract refers to an object belonging to the person disposing of it, in accordance with the article 201, and subject the following provisions.

ARTICLE 743

The ownership of a movable which is described only as regards its species is transferred only upon its identification in accordance with Article 202.

ARTICLE 744

1. Ownership and other real rights over immovable property are not transferred either between parties or as regards to third parties unless the rules laid down in the law resulting the publication of real rights are observed.
2. The law regulating the publication of real rights referred to above shall indicate the acts, judgments and instruments which should be published, whether they have the effect of transferring the ownership or not, and shall determine the rules as regards such publication.

PR-EMPTION

CONDITIONS FOR THE EXERCISE OF RIGHT OF PRE-EMPTION

ARTICLE 745

Pre-emption is defined as the right to substitute the purchaser upon the sale of the property in the cases and according to the conditions laid down in the following articles.

ARTICLE 746

The right of pre-emption belongs to the co-owner in the case of a sale to a third party of a part of the property held in common.

ARTICLE 747

In case several persons pre-empt, the entitlement of each to pre-emption shall be proportionate to his share.

ARTICLE 748

1. Pre-emption cannot be exercised:

a. If the sale is made by public auction in accordance with the procedure prescribed by law.

b. If the sale is made between ascendants and descendants, between spouses or between relatives to the fourth or intermarriage to the second degree.

c. If the property sold is destined for religious purposes, or to be annexed to property already used for such purposes.

ARTICLE 749

Any person who proposes to exercise the right of pre-emption shall notify the seller and the purchaser of his intention within fifteen (15) days from the date of becoming aware of the sale, otherwise his right shall lapse.

ARTICLE 750

1. Notification of intention to exercise the right of pre-emption must, be formal or made through the Court, It is not valid as against third parties unless it is transcribed.
2. The actual sale price must, within thirty days at the most from the date of this notification, be deposited in full at the treasury of the Court of the District in which the property Is situated, and in any event before the introduction of the action in pre-emption. If this deposit is not made within the prescribed time and manner, the right of pre-emption shall be forfeited.

ARTICLE 751

An action on pre-emption must, under pain of forfeiture be introduced against the vendor and the purchaser before the Court of the District in which the property is situated, and enrolled on the Court list within the thirty days from the date of the notification provided for in the preceding Article, The case will be disposed of as a matter of urgency.

ARTICLE 752

Without prejudice to the rules with regard to transcription, the judgment which finally establishes the right to pre-emption will constitute the title of ownership of the pre-emptor.

EFFECTS OF PRE-EMPTION

ARTICLE 753

1. The holder of the pre-emption right shall, as against the seller, subrogate the purchaser in all his rights and obligations.
2. Where a third party becomes entitled to any sold property upon exercising the right of pre-emption, the holder of the pre-emption right shall have recourse against the seller only.

ARTICLE 754

1. Where the purchaser constructs any buildings or cultivates an area on a plot prior to being notified by the holder of the pre-emption right of his intention to exercise such right, the holder thereof shall be liable, at the discretion of the purchaser, to pay either the amounts spent by the purchaser on the construction or cultivation or the increased value of the real property due to such construction or cultivation.
2. Where the purchaser builds such constructions after being notified by the holder of the pre-emption right of his intention to exercise such right, the holder thereof may demand removal of the constructions. However, where the holder of the pre-emption right elects to keep such constructions, he shall pay only the amounts spent by the purchaser on the constructions or the increased value of the real property due to such constructions and cultivation.

ARTICLE 755

No official mortgage or right of jurisdiction against the purchaser or any right in kind created by or against the purchaser shall apply to the holder of the pre-emption right, provided that such mortgage or right is created upon registering the declaration of the intention to exercise the right of pre-emption. However, the registered creditors shall maintain their priority rights in connection with the price of the real property repaid to the purchaser.

FORFEITURE OF RIGHT OF PR-EMPTION

ARTICLE 756

The right of pre-emption shall lapse in any of the following cases:

1. Where the holder of the pre-emption right waives his right, whether expressly or impliedly, even prior to the sale.
2. In any other events as provided by law.

POSSESSION

AQUISITION, TRANSFER AND LOSS OF POSSESSION

ARTICLE 757

1. Possession is defined as the control by one person, personally or through another person, of a material thing giving the impression that he is the owner or holder of another right in kind to as to do the acts normally done by the holder of title thereto.
2. Possession does not result from acts that are done by permission or merely tolerated.
3. Possession obtained by acts of violence, secretly or in dubious manner has no effect, as regards the person against whom the violence, secrecy or dubious means were exercised, only from the time that such unlawful means have ceased.

ARTICLE 758

A legally disqualified person or lacking discretion may acquire possession by the intervention of his legal representative.

ARTICLE 759

1. Possession may be exercised by an intermediary, provided that he exercises it in the name of the possessor and that his relationship to the possessor is such that he is obligated to obey his instructions at regards the possession.
2. In case of doubt a person who is actually in possession is presumed to be in possession on his own behalf. If he continues a former possession, the continuation of such possession is presumed to be on behalf of the person who commenced the possession.

ARTICLE 760

Possession is transmitted by a possessor to another person by mutual agreement, without actual delivery of the thing which is the object of possession being made, provided the person to whom the possession has been transmitted is able to assume control of the right over the thing forming the object of possession.

ARTICLE 761

It shall be assumed that the person who may first have material control shall be the acquirer, unless otherwise established.

ARTICLE 762

1. The handing over of documents issued in respect of goods entrusted to a carrier or deposited in store is equivalent to the handing over of the goods themselves.
2. If, however, the documents are handed over to one person and the goods to another, both being of good faith, the person who receives the goods has the preference.

ARTICLE 763

1. Acquisition shall be transferred to the general successor in its descriptions, provided that if the original acquirer acted in bad faith and the successor proves that his acquisition is in good faith, the successor may insist on his good faith.
2. The successor in title holding under special title may add to his possession that of the original possessor for the legal effect of possession.

ARTICLE 764

Acquisition shall be lost if the acquirer waives his actual control of the right or loses it in any other way.

ARTICLE 765

1. Acquisition shall not be lost if actual control is delayed by a temporary prohibition.
2. Acquisition shall cease where such prohibition continues for two years, which arises from a new acquisition against the will of the acquirer or without its knowledge. Such year shall be calculated from the time of commencement of such acquisition if in public, or from the time the first acquirer becomes aware thereof if in secret.

PROTECTION OF POSSESSION (THE THREE ACTIONS OF POSSESSORY ACTIONS)

ARTICLE 766

1. The acquirer of real property shall, within two years from the loss of such acquisition, demand reacquisition thereof. Where such loss of acquisition is for a secret reason, such year shall commence from the date of disclosure of such reason.
2. Any person in acquisition on behalf of another person may also recover such acquisition.

ARTICLE 767

1. A person losing possession after having been in possession for less than a year can only claim to be reinstated if the person dispossessing him has not a better possession than his own. The possession is better if founded on a legal title. If neither possessor has a title or both possessors have titles of equal value, the better possession is that which commenced first.
2. If the loss of possession takes place by violence, the possessor may always claim restitution within a year following the loss of possession.

ARTICLE 768

A person who has been dispossessed may take proceedings for recovery of possession against the person who has possession of the property of which he was dispossessed, even if such person acted in good faith.

ARTICLE 769

Where the acquirer of real property continues in such acquisition for one year and then such acquisition is trespassed, such acquirer may file a claim to prevent such trespass within one year from its occurrence.

ARTICLE 770

1. A person who remains in possession of an immovable for a whole year may, if he has good grounds to fear disturbance as a result of new works which threaten his possession, apply to the Judge to order the suspension of such works, provided that they have not been finished and that a year has not elapsed since the commencement of the works which may cause him damage.
2. The Judge may either stop or authorize the continuance of the works. In both cases he may order the provision of an adequate guarantee: in the case of a judgment ordering the suspension of the works, to cover compensation for damage caused by the suspension if a final decision shows that the claim for discontinuance of the works was without foundation; and in the case of judgment ordering the continuance of the works, to cover the cost of their total or partial demolition as compensation for the damage suffered by the possessor if he obtains final judgment in his favour.

ARTICLE 771

When several persons claim possession of the same right, the person who has actual possession is presumed to be provisionally the possessor unless it is established that he acquired possession in a wrongful manner.

ARTICLE 772

1. The possessor of a right who is unaware that he infringes the right of another is presumed to be of good faith, unless his ignorance was the result of a serious mistake.
2. If the possessor is a juristic person, it is the good or bad faith of its representative that will be taken into account,
3. Good faith is always presumed in the absence of proof to the contrary.

ARTICLE 773

1. The good faith of a possessor ceases only from such time as he becomes aware that his possession infringes the rights of another.
2. Good faith ceases as soon as the defects of the possession have been notified to the possessor in the writ by which legal proceedings are commenced. A person who has usurped the possession of another by violence is deemed to have acted in bad faith.

ARTICLE 774

Subject to proof to the contrary, possession continues to have the character that it had at the time it was acquired.

EFFECTS OF POSSESSION

AQUISITIVE PRESCRIPTION

ARTICLE 775

A person who has possession according the article 707, of a movable or immovable without; being its owner, or of a real right over a movable or immovable without a just title thereto may acquire the ownership of the thing or the title to the real right if his possession continues uninterrupted for ten years.

ARTICLE 776

1. When a person remains in possession, in good faith and by virtue of a just title, of an immovable or of a real right over an immovable, the period of acquisitive prescription is ten years,
2. Good faith is required only at the moment of conveyance of the right,
3. A just title is a document of title emanating from a person who is not the owner of the property or the beneficiary of the right that it is desired to acquire by prescription, and must be duly transcribed.

ARTICLE 777

In any case waqf property and hereditary rights are only acquired by prescription by possession for thirty-three years.

ARTICLE 778

Present possession, whose existence can be provided to have existed at an ascertained previous time, is presumed to have existed during the intervening time unless the contrary is proved.

ARTICLE 779

1. No one can set up prescription contrary to his title; that is to say that no one may by himself and in his own interests change the cause and origin of his possession.
2. A person may. however, acquire a title by prescripts if the nature of his possession is changed either by the act of a third party or if such person sets up an adverse claim against the owner; but in such a case prescription only runs from the date of such change.

ARTICLE 780

Subject to the following provisions, the rules as to extinctive prescription, in so far as they are not incompatible with the nature of acquisitive prescription, are applicable as regards the calculation of the period of prescription, its suspension or interruption, claims at regards prescription in court, the renunciation of prescription and any agreement as to modification of the period.

ARTICLE 781

Acquisitive prescription, whatever its period, it suspended if any cause exists for such suspension.

ARTICLE 782

1. Acquisitive prescription is interrupted if the possessor abandons or loses possession even by the act of a third party.
2. Prescription is not, however, interrupted by loss of possession if the possessor recovers possession within two years or takes proceedings for the recovery of possession within that period.

AQUISITION OF MOVABLES BY POSSESSION

ARTICLE 783

1. A person in possession of a movable, of a real right over a movable or of a bearer warrant by virtue of a just title becomes the owner thereof if at the moment he acquired possession he was of good faith.
2. If he enters into possession in good faith and by virtue of a just title, in the belief that the thing is free of all charges and encumbrances, he acquires the thing free of such charges and encumbrances.
3. Subject to proof to the contrary, mere possession is a presumption of a just title and good faith.

ARTICLE 784

1. A person who has lost or has been stolen of a movable or a bearer warrant, can within three years from the date of the loss or the theft, bring an action to recover it from a third party in possession, even if such third party is of good faith.
2. When the thing lost or stolen Is found in possession of a third party who bought it in good faith on the market, at a public sale or from a merchant selling similar articles, such third party is entitled to recover from the person claiming restitution the price he paid for the thing.

AQUISITION OF FRUITS BY POSSESSION

ARTICLE 785

1. A possessor acquires all fruits collected as long as he is, of good faith.
2. The natural or industrial fruits are deemed to be collected from the moment that they are separated. Civilian fruits are deemed to be collected day by day.

ARTICLE 786

A possessor in bad faith is responsible for all the fruits that he has collected or that he has failed to collect from the moment he became of bad Faith. He may, however, claim refund of his expenses in connection with the production of the fruits.

RECOVERY OF EXPENSES

ARTICLE 787

1. The owner to whom the property is restituted must pay to the possessor all expenditure of a necessary kind that he has incurred,
2. The provisions of Articles 734 and 735 shall apply as regards expenditure of an advantageous kind.
3. If the expenditure is of a luxurious nature, the possessor cannot claim repayment of any of such expenditure. He may, however, remove works he has made, provided he restores the property to its original condition, unless the owner prefers to keep the works upon payment of their break-up value.

ARTICLE 788

A person, who takes possession from a previous owner or possessor, may, If he establishes that he has paid to such previous owner or possessor the expenditure incurred by him, demand repayment from the person claiming ownership.

ARTICLE 789

The Judge may, at the request of the owner, select the method which he considers suitable for the repayment of the expenses referred to in the two preceding Articles. He may also order repayment by periodical instalments, provided that the necessary security is supplied. The owner may free himself from this obligation by paying in advance a sum equal to the amount of such instalments less interest calculated at the legal rate up to the date fixed for payment.

LIABILITY IN EVENT OF LOSS

ARTICLE 790

1. A possessor in good faith, who has enjoyed the thing in accordance with his presumed rights, is not liable to pay any compensation on this account to the person to whom he must restitute the thing.
2. He is only liable for the loss or deterioration of the thing up to the amount of profit he has received in consequence of such loss or deterioration.

ARTICLE 791

If the possessor is a possessor in bad faith, he is liable for the loss or deterioration of the thing, even fortuitous, unless he proves that such loss or deterioration would have occurred even if the thing has been in the possession of the person claiming restitution.

PART TWO

RIGHTS DERIVED FROM THE RIGHTS OF OWNERSHIP

CHAPTER ONE

THE RIGHT OF USUFRUCT, THE RIGHT OF USER, AND THE RIGHT OF OCCUPATION

SECTION ONE

USUFRUCT

ARTICLE 792

1. The right to usufruct may be acquired by a legal disposition, by presumption or by prescription.
2. Usufruct may be bequeathed by will to successive persons if they are alive at the moment of bequest: it may also be bequeathed to a child "en ventre ".

ARTICLE 793

The rights and obligations of a usufructuary are governed by the conditions imposed by the deed by which the usufruct is created and by the provisions contained in the following Articles.

ARTICLE 794

The fruits of the property which is subject to the usufruct revert to the usufructuary, in proportion to the period of his usufruct, subject to the provisions of paragraph 2 of Article 808.

ARTICLE 795

1. The usufructuary must use the property in the state in which he has received it and according to the object for which it was intended; he must observe the rules of good management.
2. The owner may object to any use of the property that is unlawful or unsuitable to the nature of the property, if the owner proves that his rights are endangered, he may demand security and If the usufructuary does not provide such security or if, in spite of the objections of the owner, he continues to use the property unlawfully or in a manner unsuitable to Its nature, the Judge may take the property from him and entrust it to a third party for its management; the Judge may also, in circumstances of a serious nature, declare the usufruct extinguished, without prejudice to the rights of third parties.

ARTICLE 796

1. The usufructuary is liable, during the continuance of his enjoyment, for all normal charges in respect of the property subject to the usufruct and all expenses for repairs Incidental to Its maintenance,
2. The owner is obliged to pay abnormal expenses and the cost of heavy repairs which do not arise from any fault on the part of the usufructuary, but the usufructuary is bound to pay to the owner the interest on the amount expended by him in this respect. If the usufructuary has himself advanced the cost, he is entitled to obtain repayment of the capital amount paid by him when the usufruct terminates.

ARTICLE 797

1. The usufructuary must preserve the thing with the usual diligence of a normal man.
2. He is responsible for the loss of the property even though no fault on his part, if he has delayed to restitute the property to its owner after the termination of the usufruct.

ARTICLE 798

The usufructuary must give notice to the owner without delay if the property perishes, deteriorates or requires major repairs the cost of which should be borne by the owner, or If it is necessary to take protective measures against an unforeseen danger. The usufructuary must also advise the owner if a third party claims to have a right over the property.

ARTICLE 799

1. When the property subject to the usufruct is a movable, an inventory must be made thereof and the usufructuary must give security in respect thereof; if no security is given, the movable in question shall be sold and the proceeds invested in public funds and the income thereof paid to the usufructuary, or other measures may be taken as ordered by the Judge and the income taken therefrom paid to the usufructuary.
2. A usufructuary who has given security may use such things as are consumable provided that he replaces them when his usufruct comes to an end.
3. The usufructuary is entitled to the natural increase of flocks and herds, after replacing therefrom such animals as have perished accidentally.

ARTICLE 800

1. The usufruct terminates at the end of the time for which it was fixed. If not fixed, it is deemed to have been created for the lifetime of the usufructuary, it ceases in any case upon the death of the usufructuary even before the end of the fixed time.
2. When there are standing crops on the land which is subject to usufruct, at the end of the time fixed for the usufruct or upon the death of the usufructuary, such land shall be left in possession of the usufructuary or of his heirs until the crops are ripe for harvesting, but the usufructuary or his heirs shall pay rent for that period.

ARTICLE 801

1. Usufruct is extinguished by the loss of the property, but the usufruct is transmitted to any property obtained in lieu of the property destroyed.

2. If the loss is not due to the fault of the owner, he is not bound to restore the property to its original condition, but if he restores the property, the usufruct is re-created in favour of the usufructuary if the loss was not imputable to him; in such a case paragraph 2 of Article 796, applies.

ARTICLE 802

The right of usufruct is extinguished by non-user during a period of fifteen years.

THE RIGHT OF USER AND OCCUPATION

ARTICLE 803

Subject to the conditions laid down in the deed by which the right is created, the extent of the right of occupation is determined by the personal requirements of the beneficiary and his family.

ARTICLE 804

The right of user and the right of occupation may only be transferred to third parties by virtue of a formal provision to that effect or for serious reasons.

ARTICLE 805

Subject to the preceding provisions, the rules as regards the right of usufruct apply to the right of user and to the right of occupation, if they are not incompatible with the nature of these two rights.

CHAPTER TWO

SERVITUDES

ARTICLE 806

Servitude is a right which limits the enjoyment of a property for the benefit of another property belonging to another owner. Servitude may be imposed on State property in so far as it is not incompatible with the use for which such property is intended.

ARTICLE 807

1. The right to servitude is acquired by a legal disposition or by inheritance.
2. Only apparent servitudes, including rights of way, can be acquired by prescription.

ARTICLE 808

1. Apparent servitude may also be created by the intention of the original owner.
2. An Intention of the original owner is deemed to exist when it is established, by any means of proof, that the owner of two separate properties has made between the two properties an apparent distinction. Thereby creating a relationship of subordination between them which would indicate the existence of servitude if the two properties belonged to different owners. If, in such a case, the two properties pass into the hands of different owners without any change in their condition, servitude is deemed, in the absence of a clear condition to the contrary, to have been constituted to the benefit of or as a burden on the two properties respectively.

ARTICLE 809

1. In the absence of an agreement to the contrary, if specific restrictions have been Imposed limiting the right of the owner of a property to build freely thereon, such as the prohibition to build above a certain height or on an area in excess of a specific area, such restrictions constitute servitude which are burdens on the property concerned in favour of properties to whose benefit these restrictions have been imposed.
2. Any breach of these servitudes gives rise to a claim for material redress. The Court may, however, only grant damages if it considers that there are reasons for so doing.

ARTICLE 810

Servitudes are governed by rules laid down in the deed by which they are created, by local custom and by the following provisions.

ARTICLE 811

1. The owner of the dominant; tenement is entitled to carry out the works necessary to use and preserve his right of servitude: he must use his right in the least harmful manner possible,
2. New requirements of the dominant tenement cannot entail any increase in the burden of the servitude.

ARTICLE 812

In the absence of an agreement to the contrary, the owner of the servient tenement is under no obligation to carry out work for the benefit of the dominant tenement, unless it is an accessory work - necessitated by the normal use of the servitude.

ARTICLE 813

1. In the absence of an agreement to the contrary, the cost of the necessary works for the use and preservation of the servitude must be borne by the owner of the dominant tenement.
2. If the owner of the servient tenement is responsible for carrying out these works at his own cost, he has always the right to free himself of this burden by abandoning the servient tenement wholly or in part to the owner of the dominant tenement.
3. If the works also benefit the owner of the servient tenement, the cost of upkeep falls on the two parties In proportion to the profit, derived by each of them.

ARTICLE 814

1. The owner of the servient tenement has no right to do anything which will tend to diminish the use made of the servitude or to make it more inconvenient. He cannot in particular, either changes the condition in which the land was or change the place originally fixed for the use of the servitude by another.
2. When, however, the place originally fixed has become such as to increase the burden of the servitude or to cause the servitude to hinder the owner of the servient tenement making improvements to the servient tenement, he may demand that the servitude be transferred to another part of the property or to another property belonging to him or to a third party who consents thereto, provided that the owner of the dominant tenement is able to exercise his rights of servitude in these new conditions as easily as he was able to do before the change.

ARTICLE 815

1. If the dominant tenement is divided, the servitude continues to benefit each part thereof, provided that the burden on the servient property is not increased.
2. If, however, the servitude only benefits one of the divided parts of the dominant tenement, the owner of the servient tenement may demand that it ceases as regards the other parts.

ARTICLE 816

1. If the servient tenement is divided, the servitude continues to subsist in respect of each part thereof.
2. If, however, the servitude is not actually used and cannot be used on certain of these divided parts, the owner of each of them may demand that it ceases as regards the part belonging to him.

ARTICLE 817

Rights to servitude cease to exist by the expiration of the period for which they were created, by the total loss of the servient tenement or of the dominant tenement and by the acquisition of the two properties by the same owner.

The rights to the servitude are, however, revived if the two properties cease to be held jointly by the same owner.

ARTICLE 818

1. The right to servitude is extinguished by non-user for a period of fifteen years. Such term shall be thirty-three years if the right relates to awqaf property, upon the expiry of this thirty-three year period, the method of exercising the right of easement may be amended.
2. The user of the servitude by one of the co-owners in common of a dominant tenement interrupts the prescription in favour of the other co-owners. In the same way, the suspension of prescription in favour of one of these co-owners, suspends prescription in favour of the others.

ARTICLE 819

1. The servitude ceases to exist if conditions so change that the right can no longer be used.
2. The servitude is revived if conditions are re-established in such a way that the right can again be used, unless the right of servitude has been extinguished by non-user.

ARTICLE 820

The owner of a servient tenement may free himself wholly or partially of the servitude if the servitude has lost all its utility for the dominant tenement or if its actual utility has been reduced out of proportion to the burden imposed on the servient tenement.

BOOK FOUR

ACCESSORY REAL RIGHTS OR REAL SECURITY

PART ONE

MORTGAGE

ARTICLE 821

Mortgage is a contract by which a creditor acquires, over an immovable appropriated to the payment of his debt, a real right by which he obtains preference over ordinary creditors and creditors following him in rank, for the repayment of his claim out of the price of the immovable, no matter into whose hands the immovable has passed.

ARTICLE 822

1. A mortgage can only be constituted by an official document.
2. The cost of this official document is, in the absence of an agreement to the contrary, borne by the mortgagor.

ARTICLE 823

1. The mortgagor may be the debtor himself or a third party who consents to mortgage his property In the interest of the debtor.

2. In both cases, the mortgagor must be the owner of the mortgaged property and must have legal capacity to dispose of it.

ARTICLE 824

1. If the mortgagor is not the owner of the mortgaged property, the mortgage contract becomes valid if ratified by the true owner of the property by an official deed. In the absence of ratification, the mortgage is only effective from the time that the immovable becomes the property of the mortgagor.
2. A mortgage on property in expectancy is void.

ARTICLE 825

A mortgage constituted by an owner whose title to the property is subsequently annulled, resiliated, abolished or ceases to exist for any other reason, remains a valid mortgage in favour of the mortgagee creditor if he has acted in good faith at the time of the conclusion of the mortgage.

ARTICLE 826

1. In the absence of any provision of the law to the contrary, a mortgage can only be constituted on immovable property.
2. The mortgaged property must be marketable and capable of being sold by public auction. It must be specifically and precisely described both as regards its nature and location, and such description must be contained either in the deed constituting the mortgage or in a subsequent authentic document, otherwise the mortgage is void.

ARTICLE 827

A mortgage extends to the accessories of the mortgaged property which are considered to be immovable accessories, includes particularly, buildings and trees that exist in the mortgaged property at the time of the mortgage or erected thereafter, servitudes and properties created by allotment, all the improvements and other constructions in the mortgaged property in the absence of an agreement to the contrary and without prejudice to the privileges of sums due to contractors or architects, as provided in the article 936.

ARTICLE 828

Registration of attachment shall include with real property the returns and the revenues for the period following the registration. Distribution of such returns shall be similar to distribution of the price of real property.

ARTICLE 829

The owner of buildings situated on another person's land may mortgage such buildings officially. In this case, the mortgagee shall have the preference right to receive the debt from the price of the wreckage if the buildings were demolished and from the consideration paid by the owner of the land if he spared the building, in accordance within the rules of adhesion.

ARTICLE 830

1. A mortgage concluded by all owners of a joint property shall remain valid whatever the result of division or sale of such real property due to it being indivisible.
2. Where a joint proprietor has mortgaged his share in joint property or a specified part thereof, either in whole or in part, and upon division shares other than the mortgaged share are attributed to him, the mortgage shall cover part of such shares equal to the value of the originally mortgaged real property. Such share shall be by an order on application. The mortgagee shall make a new registration showing the amount of the share to which the mortgage is entered within ninety days from the date of being informed by any concerned party of the result of division. Mortgages transferred by such method shall not affect neither a mortgage concluded by all the joint proprietors nor the privilege of the parties to the division.

ARTICLE 831

A mortgage may be granted to secure a conditional, future or contingent debt. It may also be granted to secure an open credit or the opening of a current account, provided that the amount of the debt secured or the maximum amount which such debt may attain is fixed in the mortgage deed.

ARTICLE 832

In the absence of a provision of the law or of an agreement to the contrary, every part of the mortgaged immovable or movables shall secure the whole of the debt and each part of the debt is secured by the whole of the mortgaged immovable or movables.

ARTICLE 833

1. In the absence of a provision of the law to the contrary, the mortgage cannot be separated from the debt that it secures as regards its validity and extinction.
2. If the mortgagor is a person other than the debtor, he may, in addition to the defences that are personal to him, avail himself of those which belong to the debtor as regards the debt and he keeps this right notwithstanding the renunciation of the debtor.

CHAPTER TWO

EFFECTS OF A MORGAGE

SECTION ONE

EFFECTS OF A MORGAGE AS BETWEEN THE PARTIES

AS REGARDS THE MORTGAGOR

ARTICLE 834

A mortgagor may dispose of the mortgaged property, but any disposal of the property by him does not affect the right of the mortgagee creditor.

ARTICLE 835

A mortgagor has the right to carry on the management of the mortgaged property, collect the fruits and yields until making an entry of attachment over the property's registration.

ARTICLE 836

1. A lease agreement entered into by a mortgagor cannot have any effect against a mortgagee unless such lease has been given a specific date before making an attachment entry over the property's registration. A lease that has not a specific date in such a way or that has been entered into after placing an attachment entry over the property's registration without payment of rent having been made in advance, will not be effective unless it falls within the category of acts of good management.

2. If the duration of the lease entered into before placing an attachment entry over the property's registration exceeds nine years, the lease has effect against the mortgagee only for ten years unless it has been registered in the Land Registry before registration of the mortgage.

ARTICLE 837

1. A receipt or an assignment of rent in advance for a period not exceeding three years is not valid against a mortgagee unless it has a specific date prior to placing attachment entry over the property's registration.
2. If the payment or assignment of rent is made for a period exceeding three years, it will not be valid against a mortgagee unless it is registered in the Land Registry before registration of the mortgage, in default of such transcription, the period will be reduced to three years, subject to the provisions of the preceding paragraph.

ARTICLE 838

A mortgagor is the guarantor of the effectiveness of the mortgage. The mortgagee may oppose any act or omission that appreciably diminishes his security and, in case of emergency, take all necessary preservative measures and claim from the mortgagor the expenses incurred in this respect.

ARTICLE 839

1. if the mortgaged property perishes or deteriorates by the fault of the mortgagor, the mortgagee may either claim adequate security or immediate payment of the debt,
2. If the loss or deterioration is not Imputable to the mortgagor and the mortgagee does not agree to leave his claim without security, the debtor may either furnish adequate security or pay the debt in full before it falls due. In the latter case, if the debt does not carry Interest, the mortgagee has only a right to an amount equal to the amount of his claim less the Interest calculated at the legal rate from the date of payment to the date of maturity.
3. In all cases, if acts are done which may result in the loss of or deterioration to the mortgaged property or which may render the mortgaged property Insufficient to secure the debt, the mortgagee may apply to the Judge to order the cessation of such acts and the adoption of the necessary measures to avoid the occurrence of the loss.

ARTICLE 840

In the event of loss of or deterioration to the mortgaged property for any reason whatsoever, the mortgage is transferred, in its order of rank, to any right obtained as a result of such loss or deterioration, such as compensation, monies paid on account of insurance or payments on account of expropriation for public utility.

AS REGARDS THE MORTGAGEE

ARTICLE 841

If the mortgagor is a person other than the debtor, only the mortgaged property, to the exclusion of his other property, may be proceed against and the mortgagor shall not in the absence of an agreement to the contrary to demand the sale of debtor's property before the sale of the mortgaged property.

ARTICLE 842

1. A creditor may, upon a summons to the debtor to pay, proceed, within the time allowed and in accordance with the forms prescribed by the Code of Civil and Commercial Procedure, with the expropriation and the sale of the mortgaged property.
2. If the mortgagor is a person other than the debtor, he may avoid any proceedings against him by abandoning the mortgaged property, according to the procedure and the rules laid down for the abandonment of an immovable by a possessor.

ARTICLE 843

1. Any agreement, even if entered into after the constitution of the mortgage, which authorizes the creditor in case of non-payment of the debt on maturity to acquire the mortgaged property at a fixed price, whatever that price may be, or to sell the mortgaged property without observing the formalities prescribed by law, is void.
2. It may, however, be agreed, after the debt or one of the instalments of the debt has fallen due, that the debtor transfers to the creditor the mortgaged property in payment of the debt.

ARTICLE 844

1. Subject to the provisions laid down for bankruptcy, a mortgage shall be effective as against third parties only if the deed or the judgment establishing the mortgage has been inscribed before third parties have acquired real rights on the property.
2. The assignment of a right secured by an inscription, the right resulting from the legal or contractual subrogation into the right and the assignment of priority in rank of an inscription in favour of another creditor are only enforceable as against third parties if they are inscribed in the margin of the original Inscription.

ARTICLE 845

The inscription, its renewal, its restriction, the annulment of the restriction and all the effects thereof are governed by the provisions of the law regulating the publication of real rights.

ARTICLE 846

In the absence of an agreement to the contrary, the mortgagor shall bear the costs of inscription and its striking off.

THE RIGHT OF PREFERENCE AND THE RIGHT OF TRACING

ARTICLE 847

Mortgagees will be paid before unsecured creditors out of the proceeds of sale of the mortgaged property, or out of any monies obtained in substitution thereof, in the order of the rank of their inscriptions, even when their inscriptions are entered on the same day.

ARTICLE 848

A mortgage starts from the date of its inscription, even if it secures a conditional, future or contingent debt.

ARTICLE 849

A mortgage inscription shall result in including costs of the deed, renewal, and inscription in the distribution and in the mortgage rank itself.

ARTICLE 850

A mortgagee may, within the limits of his secured debt, assign his rank in favour of another creditor having a mortgage inscribed on the same property. The defences available against the first creditor, with the exception of those connected with the extinction of his claim when that extinction occurs after the assignment of the rank, can be raised against the second creditor.

ARTICLE 851

1. A mortgagee may, upon maturity of the debt, take proceedings for the expropriation of the mortgaged property against a possessor, unless this possessor chooses to pay the debt, redeem the mortgage or abandon the property.
2. Any person is deemed to be a possessor who acquires the property or any other real right over the property by any other way, capable of being mortgaged, without being personally responsible for the debt secured by the mortgage.

ARTICLE 852

A possessor may, upon maturity of the debt secured by the mortgage, pay the debt and its accessories including the costs of proceedings from the date of the formal summons, and will retain this right up to the date of the sale by public auction. In such a case, he has a claim for all he has paid against the debtor and against the former owner of the mortgaged property. He may also be subrogated into the right of the creditor who has been paid in full, with the exception of those rights relative to guarantees furnished by a person other than the debtor.

ARTICLE 853

A possessor must maintain the inscription of the mortgage to the benefit of which he is subrogated to the creditor, and renew it, if necessary, until eradication of the inscriptions that existed, at the time of the transcription of his title to the property.

ARTICLE 854

1. Where the possessor has registered his title deed, he may discharge real property of any mortgage that was registered before the registration of such deed.

2. The possessor may use such right even before the creditors submit an application for attachment of real property or serve a notice on the possessor.

ARTICLE 855

Where the possessor wishes to discharge real property, he shall serve a notice on each of the creditors whose rights are registered. The said notice shall include the following information:

a. An extract from his title deed, including the kind and date of disposal in addition to an accurate description of real property and the name of the previous owner thereof. If such disposal was a sale, the price and its supplements shall also be stated.
b. The date and registration number of the possessor's title.
c. The amount which the possessor estimates as the price of the real property. Such amount shall not be less than the price which is taken as a base for estimating the price in the event of dispossessing real property for public interest. This amount shall not be less than the remaining amount of the price being due from the possessor if such a disposal is a sale. If the parts of real property are associated with different mortgages, the value of each part should be estimated separately.
d. Rights which were registered on real property before registering its title deed, shall be included, the date of such registrations, the amounts of such rights and the names of the creditors.

ARTICLE 856

The possessor shall state in the notice provided for in the previous Article that he is ready to settle the registered debts to the extent of the property's valuation. The possessor shall not be obliged to accompany the offer with the cash amount, however, the offer shall be restricted to expressing the willingness to settle the due amount immediately, whatsoever the date of maturity of the registered debts.

ARTICLE 857

Every inscribed creditor and every surety of an inscribed debt has the right to apply for the sale of the property which the possessor wishes to purge, provided that his application is made within thirty days of the date of the last formal summon, this period will be increased by the additional time allowed for distance between the actual and the elected domicile of the creditor; this additional time allowed for distance shall not exceed thirty additional days.

ARTICLE 858

1. The application shall be made by a summons to the possessor and to the former owner signed by the applicant or by his representative holding a special mandate for this purpose. The applicant must deposit to the Treasury of the Court a sum which is sufficient to cover the cost of the sale by auction, but he shall have no right to a refund of expenses advanced by him if no higher price than that offered by the possessor is obtained as a result of the auction. The failure to comply with any one of these conditions entails the nullity of the application.
2. The applicant may not renounce his application without the consent of all the Inscribed creditors and all the sureties.

ARTICLE 859

1. When an application is made for the sale of a property, the formalities laid down for compulsory expropriation must be followed, The sale shall take place at the request of either the applicant or of the possessor, whoever shall have more interest In expediting the sale, The applicant must mention in the notices of sale the price at which he has valued the property.
2. The purchaser by auction is liable, in addition to the payment of the price of the adjudication and the cost of formalities for the purge, to refund to the possessor who is dispossessed the cost of his deed, of its transcription and the cost of the summons served by him.

ARTICLE 860

If the sale of the property is not applied for within the period and in accordance with the procedure laid down, the ownership of the property, freed from all inscriptions, and shall be vested finally on the possessor if he pays the sum at which he has valued the property to the creditors whose rank entitled them to payment, or if he deposits this sum in the Treasury of the Court.

ARTICLE 861

1. The abandonment of the mortgaged property is made by a declaration submitted to the Registrar of the competent Court of First Instance by the third party holder who must apply for the entry of his declaration In the margin of the transcription of the formal summons to pay and who must, within five days from the date of the declaration, notify the abandonment to the creditor who is conducting the proceedings of expropriation.
2. The party who has most interest to expedite the sale may apply to the Judicial Authority for the nomination of a receiver against whom the proceedings of expropriation may be taken. The possessor, if he applies, will be appointed receiver.

ARTICLE 862

If the possessor does not opt for payment of the inscribed debts, the purge of the property or the abandonment of the property, the mortgagee can only take expropriation proceedings against him, in accordance with the provisions of the Civil and Commercial Procedure Code, after he has summoned him to pay the debt become due or to abandon the property. This summons shall be notified after
or at the same time as the summons to pay is served on the debtor.

ARTICLE 863

1. The possessor who has transcribed his title deed and who was not a party to the proceedings in which Judgment was given against the debtor to pay the debt, may, if the judgment was subsequent to the transcription of his title, raise the defences which could have been raised by the debtor.
2. He may, in any case, raise defences which the debtor still has the right to raise after the judgment.

ARTICLE 864

The third party holder may take part in the auction on condition that he does not offer a price lower than the sum that he still owes on the price of the property which is being sold.

ARTICLE 865

If the mortgaged property is expropriated, even after proceedings for purge or abandonment have been taken and the possessor acquires the property at the auction, he will be deemed to be the owner of the property by virtue of his original title deed and the property will be purged of all inscriptions if he pays the price for which he acquired the property at the auction or if he deposits the price in the Treasury of the Court.

ARTICLE 866

If, in the preceding cases, a person other than the possessor acquired the property at the auction, he will hold his right by virtue of the Judgment of adjudication from the possessor.

ARTICLE 867

If the price at which the property is sold by auction exceeds the total of the sums due to the Inscribed creditors, the difference in excess belongs to the possessor; and the mortgagee creditors of the possessor may be paid out of his excess.

ARTICLE 868

Servitudes and other real rights that the possessor had on the property before he acquired the property are revested in him.

ARTICLE 869

The possessor is liable to restitute the fruits of the mortgaged property from the date he has been summoned either to pay or to abandon the property. If legal proceedings are abandoned within three years, he has only to account for the fruits as from the day that a new summons is served on him.

ARTICLE 870

1. The third parry holder has, against his preceding owner, a right of action for warranty to the extent that a successor in title has against the person from whom he has acquired the property for valuable consideration or as a gift.
2. He has also a right of action against the debtor for payment of any sums paid by him, for any reason whatsoever, in excess of the amount due him in accordance with this title deed. He is subrogated into the rights of the creditors discharged by him particularly into the guarantees furnished by the debtor, but not into those furnished by a party other than the debtor.

ARTICLE 871

The possessor is personally liable towards creditors for any deterioration caused to the immovable by his negligence.

CHAPTER THREE

EXTINGUISHMENT OF THE MORTGAGE

ARTICLE 872

The mortgage is extinguished when the secured debt is extinguished; it is revived, together with the debt, if the cause by reason of which it was extinguished disappears, without prejudice, however, to the rights acquired by a third party in good faith in the interval between the extinguishment of the right and its revival.

ARTICLE 873

When the formalities of a purge are carried out, the mortgage by agreement is definitely extinguished even if the ownership of the possessor who proceeded with the purge disappears for any cause whatsoever.

ARTICLE 874

When the mortgaged property is sold by public auction as a result of compulsory expropriation proceedings taken, against either the owner, the possessor or the receiver to whom the abandoned property was delivered, the mortgage rights encumbering the property are extinguished by the deposit of the purchase price or by payment thereof to the Inscribed creditors who, by virtue of their rank, are entitled to receive payment of their claims out of that price.

PART TWO

JADGEMENT CHARGE UPON IMMOVABLE PROPERTY

CHAPTER ONE

CONSTITUTION OF JUDGEMENT CHARGE

ARTICLE 875

1. Every creditor who has obtained an enforceable judgment rendered on the merits of the case in which the debtor is condemned to a liquidated amount may, if he is of good faith, obtain as security for his claim in principal, interest and costs, a judgment charge over the immovable property of his debtor.
2. After the debtor's death, the creditor may not take jurisdiction over a property in the estate.

ARTICLE 876

A judgment charge cannot be obtained by virtue of a judgment rendered by a foreign Court or by virtue of arbitration award until the judgment or the award has been made enforceable.

ARTICLE 877

A judgment charge may be obtained by virtue of a judgment confirming a compromise or an agreement between the parties, but not by virtue of a judgment rendered at to the validity of a signature.

ARTICLE 878

A judgment charge may only be obtained on one or more specific immovables belonging to the debtor at the time of the inscription of this right and capable of being sold by public auction.

ARTICLE 879

1. A creditor who wishes to obtain a judgment charge on the immovable property of his debtor must submit an application to the President of the Court of First Instance in the District In which the immovable property on which he desired to obtain the charge is situated.

2. An authenticated copy of the judgment or a certificate by the Office of the Clerks of the Court containing the operative part of the judgment must be annexed to the application which will contain the following particulars;

a. The creditor's surname, first name, profession, actual place of abode, and elected domicile within the town in which the Court is situated ;
b. surname, first name, profession and place of abode of the debtor;
c. The date of the judgment and designation of the Court that rendered the Judgment;
d. The amount of the debt, if the debt mentioned In the judgment is not a liquid amount, the President of the Court may liquidate it provisionally and fix the amount for which a Judgment charge may be obtained;
e. An exact and precise description of the immovable properties, their situation, together with documents establishing their value.

ARTICLE 880

1. The President of the Court will record his order for a judgment charge at the foot of the application.
2. The President of the Court should however, in giving an order for a Judgment charge, take Into consideration the amount of the debt and the approximate value of the immovable properties set out in the application, and should if necessary, restrict the Judgment charge to some or one of these immovables, or to a part in an immovable If he considers that this is sufficient to secure the principal of the debt, the interest thereon and the cost thereof due to the creditors.

ARTICLE 881

Upon the same day as the order authorizing the judgment charge is rendered, the Office of the clerk of the Court must notify it to the debtor, endorse it on the authenticated copy of the judgment or on the certificate annexed to the application for a judgment charge, and inform the Office of the Clerks of the Court that has rendered the Judgment so that they may endorse the order on any other copy of the judgment or any other certificate that will be delivered to the creditor.

ARTICLE 882

1. The debtor may lodge an appeal against the order authorizing the judgment charge, by the methods established in the applicable procedural law.
2. An endorsement must be made, in the margin of the inscription, of any order or of any judgement annulling the order.

CHAPTER TWO

THE EFFECTS OF THE JUDGEMENT CAHRGE, ITS REDUCTION AND EXTINGUISHMENT

ARTICLE 883

1. Any interested party may apply for the reduction of the judgment charge to reasonable proportions, if the value of the Immovable properties charged herewith is in excess of the amount which is sufficient to secure the debt.
2. The reduction of the judgment charge may be operated either by way of restriction of the charge to one part of the immovable or immovables on which it is inscribed or by the transfer of the charge to another Immovable the value of which adequately secures the debt.
3. The costs required for carrying out the reduction, even If made with the consent of the creditor, are payable by the person who has applied for the reduction.

ARTICLE 884

A creditor who has obtained a Judgment charge has the same rights as a mortgagee who has obtained a mortgage, subject to any special provision of the law, the judgment charge is governed by the same provisions as a mortgage, especially as regards its inscription, its renewal, its eradication, the indivisibility of the right, its effect and its extinguishment, all these without prejudicing special provisions stated.

PART THREE

PLEDGE

CHAPTER ONE

ELEMENTS OF A PLEDGE

ARTICLE 885

Pledge is a contract by which a person underrates as security for his debt or that of a third party, to hand over to the creditor or to a third person chosen by the parties, a thing over which he constitutes, in favour of the creditor, a real right, and by which the creditor is allowed to retain the thing pledged until repayment of the debt and to obtain payment of his claim out of the price of such thing, no matter in whose hands it may be, in preference to unsecured creditors and to creditors following him in rank.

ARTICLE 886

Only movables or immovables which can be sold independently by public auction may be the object of a pledge.

ARTICLE 887

The provisions of Articles 824, 831, 833, relating to mortgage are applicable to pledge.

CHAPTER TWO

THE EFFECTS OF A PLEDGE

AS BETWEEN THE CONTRACTING PARTIES

OBLIGATIONS OF THE PLEDGOR

ARTICLE 888

1. The pledgor is bound to deliver the thing pledged to the creditor or to the third person chosen by the contracting parties to hold the thing,
2. Provisions relating to the obligation as to delivery of a thing sold apply to the obligation as to delivery of a thing pledged.

ARTICLE 889

The pledge is extinguished if the thing pledged returns into the hands of the pledgor, unless the pledgee proves that the return took place for a reason that was not intended to extinguish the pledge, subject always to the rights of third parties.

ARTICLE 890

The pledgor guarantees the pledge and its efficacy. He must not do anything which diminishes the value of the thing pledged or prevents the creditor exercising his rights derived from the contract. The pledges may, in case of urgency, take at the cost of the pledgor all necessary measures for the preservation of the thing pledged.

ARTICLE 891

1. A pledgor guarantees the thing pledged against loss or deterioration when such loss or deterioration is due either to his negligence or to force majeure.
2. The provisions of Article. 839 and 840, relating to the loss or deterioration of mortgaged property and to the transfer of the right of the creditor to any rights or property that have replaced the mortgaged property, apply to pledge.

OBLIGATIONS OF THE PLEDGEE

ARTICLE 892

If the pledgee takes delivery of the thing pledged, he must use for its preservation and maintenance the care expected from a reasonable person and he must answer for its loss or deterioration unless he can show that they were due to a cause not imputable to him.

ARTICLE 893

1. The pledgee may not derive any gratuitous advantage from the thing pledged.
2. He must, in the absence of an agreement to the contrary, make the thing pledged render all the fruits that it is capable of producing.
3. The net revenue and the benefit that he obtains from the use of the thing pledged, must be applied in reduction of the debt even before it falls due,such revenue or benefit shall be imputed in the first place to expenses he has incurred for the preservation of and repairs to the thing pledged, then to expenses and interest, and then to the capital amount of the debt.

ARTICLE 894

1. If the thing pledged produces fruits or revenue, and the parties have agreed to substitute these fruits or revenue in whole or in part for interest, such an agreement will be valid to the extent that it does not exceed the maximum conventional rate of interest authorized by the law.
2. If the parties have not agreed that the fruits will be substituted for interest, and have not fixed the rate of interest, the interest will be fixed at the legal rate, provided that it does not exceed the amount of the fruits, if the parties have not fixed a date for payment of the secured debt, the creditor can only demand payment of his claim by a deduction from the fruits, subject to the right of the debtor to pay off his debt at any time he chooses to do so.

ARTICLE 895

1. The pledgee shall manage the thing pledged and shall use in such management the care expected from a reasonable person. He may not, without the consent of the pledgor, change the method of exploitation of the thing pledged and is bound to advise the pledgor immediately of any matter that requires his intervention.
2. If the pledgee misuses this right or is guilty of bad management or gross negligence, the pledgor shall have the right to demand that the thing be placed in judicial deposit or to claim restitution of the thing against payment of his debt. In the latter case, if the secured debt is not subject to interest and is not yet due for payment, the creditor will only be entitled to a sum equal to the amount of the debt, less interest at the legal rate from the date of payment to the date of maturity.

ARTICLE 896

A pledgee must, upon receipt of his debt and the accessories, expenses and compensation for losses attached thereto, restitute the thing pledged to the pledgor.

ARTICLE 897

The provisions of Article 841 relating to the responsibility of a mortgagor who is not the debtor, and the provisions of Article 843 relating to appropriation in case of non-payment and to sale without recourse to legal formalities, apply to pledge.

AS REGARDS TO THIRD PARTIES

ARTICLE 898

1. The thing pledged must be held by the pledgee or by the third party chosen by the parties.
2. The thing pledged may secure several debts.

ARTICLE 899

1. Pledge confers upon the pledgee the right to retain the thing pledged against any other person, subject to the rights of third parties which have been preserved In accordance with the law.
2. If the pledgee loses possession of the thing unknowingly or against his will, he has the right to reclaim the thing from any other person in accordance with the provisions of the law as to possession.

ARTICLE 900

A contract of pledge secures not only the capital of the debt, but also and in the following same rank;

a. Expenses of a necessary kind Incurred for the preservation of the thing pledged;
b. Compensation for losses resulting from defects in the thing pledged;
c. The cost of the contract of loan, of the contract of pledge and of its inscription, if any;
d. The costs incurred for the enforcement of the pledge;
e. All Interest that has fallen due, subject to the provisions of Article 227.

CHAPTER THREE

EXTINGUISHMENT OF PLEDGE

ARTICLE 901

A right of pledge is extinguished as a result of the extinguishment of the secured debt; it is revived with the debt if the cause of the extinguishment of the debt disappears, without prejudice to the rights of third parties in good faith legally acquired in the interval between the extinguishment and the revival of the right of pledge.

ARTICLE 902

A right of pledge is also extinguished by one of the following causes:-

a. The renunciation of the right by the pledgee if he has the legal capacity to liberate the debtor of the debt. The renunciation may result tacitly if the creditor voluntarily gives up the thing pledged or if he agrees without reserve to its alienation. If, however, the thing pledged is charged with a right in favour of a third party, the renunciation of the pledgee is only valid as regards such third party If such third party consents:
b. The union of the right of pledge and that of ownership of the thing pledged in one and the same person;
c. The loss of the thing pledged or the extinguishment of the right given in pledge.

CHAPTER FOUR

CERTAIN KINDS OF PLEDGE

PLEDGE OF AN IMMOVABLE

ARTICLE 903

A Pledge of an immovable is only valid as against third parties if, in addition to delivery of the pledged immovable to the pledgee, the contract of pledge is inscribed. The provisions governing the inscription of a mortgage apply to the inscription of pledge of an immovable.

ARTICLE 904

A pledgee of an immovable may lease the immovable to the pledgor without the contract of pledge being less valid as against third parties. If the lease is agreed to in the contract of pledge, it must be mentioned in the inscription of the pledge, but if the lease is agreed to after the pledge, it must be noted in the margin of that inscription. Notification is necessary if the lease is tacitly renewed.

ARTICLE 905

1. A pledgee of an immovable must provide for the maintenance of the immovable, pay the expenses necessary for its preservation, the annual taxes and charges, and deduct the amount of these expenses from the fruits he has collected or obtain repayment from the price of the immovable in the rank of privilege accorded by law to such expenses.
2. He may free himself of these obligations by abandoning his right to the pledge.

PLEDGE OF A MOVABLE

ARTICLE 906

A pledge of a movable is only valid against third parties if, in addition to the delivery of the movable pledge.

It is constituted by a written contract adequately setting out the amount of the secured debt and the object of the pledge and having an established date.

The rank of the secured creditor will be fixed in accordance with such established date.

ARTICLE 907

1. The rules relating to the effects of possession of material movables and bearer securities apply to the pledge of a movable.
2. A pledgee in good faith may, in particular, avail himself of his right of pledge even if the pledgor was not qualified to dispose of the thing pledged, on the other hand, a possessor in good faith, even after the date of the pledge, may avail himself of the right he has acquired over the thing pledged.

ARTICLE 908

1. If the thing pledged appears to be in danger of perishing, deteriorating or diminishing in value, to such an extent that there is a danger that it will not suffice to secure the claim of the pledgee, and the pledgor does not apply for the restitution of the thing in exchange for another thing, either the pledge or the pledgor may apply to the Judge for authority to sell the thing pledged by public auction or at its value at the time on the stock exchange or on the market.

2. The Judge shall, when authorizing the same, make an order as to the deposit of the price; in such a case the right of the creditor is transferred from the thing pledged to the price thereof.

ARTICLE 909

If a suitable occasion presents itself for the sale of the thing pledged and the sale is advantageous, the pledgor may, even before the maturity of the debt, apply to the Judge for authority to sell the thing. The Judge, when authorizing the sale, will fix the conditions and make an order as to the deposit of the price.

ARTICLE 910

1. The pledgee may upon failure of payment of the debt, apply to the judge for authority to sell thing pledged by public auction or at its value at the time on the stock exchange or on the market.
2. The pledgee may also apply to the Judge for an order authorizing him to appropriate the thing pledged in payment of the debt, the value thereof being charged against him in accordance with an estimate by experts.

ARTICLE 911

The preceding provisions apply, in so far as they are not incompatible either with provisions of commercial laws or provisions relating to institutions authorized to lend money on pledge, or with the laws and regulations governing special cases as to the pledge of movables.

ARTICLE 912

1. A pledge of a debt is only valid as regards the debtor upon notification to or acceptance by the debtor of the pledge, as provided for in Article 302.
2. The pledge is only valid as against third parties if the pledgee holds the title at the pledged debt, the rank of the pledge is fixed as at the established date of the notification or of the acceptance of the pledge.
3. A debt which cannot be assigned or attached cannot be pledged.

ARTICLE 913

Nominal bonds or promissory notes may be pledged according to the special procedures provided for in the law regulating their assignment, provided that it is stated that the assignment is performed by way of pledge. Notification thereof shall not be required.

ARTICLE 914

1. In the absence of an agreement to the contrary, the pledgee has the right to collect interest on the pledged debt which falls due after the constitution of the pledge. He has also the right to collect periodical payments appertaining to the pledged debt upon condition that he sets off the amounts so collected by him first against expenses, then against the interest and then against the capital of the of the debt secured by the pledge.
2. A pledgee is bound to look to the protection of the pledged debt, if he has the right to collect any part of the debt without the intervention of the pledgor he is bound to collect such part of the debt at the time and place fixed for payment and immediately inform the pledgor thereof.

ARTICLE 915

The debtor of a debt given in pledge may set up against the pledgee the defences relative to the validity of the debt secured by the pledge as well as those defences he may have against his own creditor, to the extent that an assigned debtor may set up defences against the assignee in the case of an assignment of debt.

ARTICLE 916

1. If the pledged debt falls due for payment before the actual debt secured by the pledge, the debtor must discharge his debt to the pledgee and the pledgor jointly; the pledgee and the pledgor may each demand the debtor to deposit the amount paid by him, in which they must immediately constitute a new pledge in favour of the pledgee, in which case the pledge is transferred to the amount so deposited.

2. The pledgee and the pledgor must, without prejudice to the rights of the secured creditor, co-operate together for the investment of the amount paid by the debtor to the best advantage of the pledgor, and they must immediately constitute a new pledge in favour of the pledgee.

ARTICLE 917

If the pledged debt and the secured debt fall due, the Pledgee may collect the debt pledged up to the amount due to him and demand that the debt be sold or be allocated to him in accordance Article 910, paragraph two.

PART FOUR

PRIVILEGED RIGHTS

CHAPTER ONE

GENERAL PROVISIONS

ARTICLE 918

1. A privilege is right of preference granted by law to a particular right by reason of its quality.
2. No right is privileged except by virtue of a provision of the law.

ARTICLE 919

1. The rank of a privilege is fixed by law, in the absence of a formal provision of the law fixing the preferential rank of a privileged right, it ranks after any other privilege provided for in this chapter or part.
2. In the absence of a provision of the law to the contrary, privileged rights of the same rank will be paid rateably.

ARTICLE 920

General privileges extend to all movable and immovable property of the debtor.

Special privileges are limited to a specific movable or immovable only.

ARTICLE 921

1. A privilege cannot be set up against the holder in good faith of a movable.
2. A lessor of an immovable and the hotel proprietor are deemed, in so far as this Article applies, to be holders of furniture used in the leased premises and of effects brought into the hotel by travellers respectively.
3. If a creditor has reasonable grounds to apprehend that movables charged with a privilege in his favour will be misappropriated, he may apply for them to be placed in judicial custody.

ARTICLE 922

1. Provisions of the law relating to mortgages are applicable to privileged rights over immovable property in so far as they are not incompatible with the nature of these rights,the provisions relating to purge, to inscription and the effects of Inscription, and to renewal and eradication of inscription, are In particular applicable to privileges over immovables.
2. General privileges, however, even over immovables, are not subject to publication nor do they give a right of tracing the property into the hands of subsequent holders. Privileges over immovables securing sums due to the State Treasury are also not subject to publication. All these privileges rank prior to any other privilege over immovables or mortgages; whatever may be the date of their Inscription, as between each other, the privilege securing sums due to the State Treasury ranks prior to general privileges.

ARTICLE 923

Provisions Applying to the loss or deterioration of mortgaged property apply also to privileges.

ARTICLE 924

In the absence of a provision of the law to the contrary, privileges are extinguished in the same way and in accordance with the same rules as a mortgage or a pledge to the extent that such rules do not conflict with the nature of a privilege.

CHAPTER TWO

KINDS OF PRIVILAGES

ARTICLE 925

In addition to the privileges established by special provisions of the law, the right, enumerated in the following Articles are privileged.

GENERAL PRIVILAGES AND SPECIAL PRIVILAGES OVER MOVABLES

ARTICLE 926

1. Costs of legal proceedings incurred, in the common interest of all the creditors, for the preservation and sale of the property of the debtor, have a privilege over the price of such property.
2. Such costs are payable in priority to any other claim, whether privileged or secured by a mortgage, including claims of creditors for whole benefit such costs have been incurred, costs incurred for the sale of the property are payable In priority to the costs of the procedure of distribution.

ARTICLE 927

1. Sums due to the State Treasury for taxes, duties, and other dues of any kind are privileged in accordance with the conditions laid down by laws and regulations issued in this connection.
2. Such sums shall be paid out of the proceeds of sale of the property charged with this privilege, in whosoever's hands it may be and before all other rights, whether privileged or secured by a mortgage, except costs of legal proceedings.

ARTICLE 928

1. Expenses incurred for the preservation of, and repairs of a necessary kind to a movable are secured by a privilege over the movable as a whole,
2. Such expenses are payable out of the proceeds of sale of the movable so charged, and rank immediately after the costs of legal proceedings and sums due to the State Treasury. At between them such expenses will rank in the inverse order of the dates on which they are incurred.

ARTICLE 929

1. The following claims are secured by a privilege over all the debtor's property, whether movable or immovable:

a. Sums due to servants, workers and other wage earners for their wages and salaries for the last six months.

b. Sums due for foodstuffs and clothes supplied to the debtor and to persons depending on him, for the last six months.

c. Alimony due by the debtor to his dependents, for the last six months.

2. These claims rank immediately after the costs of legal proceedings, sums due to the Public Treasury and expenses for the preservation of and repair to the property, as between them such claims are paid rateably.

ARTICLE 930

1. Sums disbursed for seeds, manure and other fertilizers and insecticides, and sums disbursed for cultivation and harvesting are secured by a privilege over the crop for whose production they are spent, they will have the same rank.
2. Such sums are payable out of the proceeds of sale crops, immediately after the claims above referred to.
3. Sums due in respect of agricultural implements are, in similar manner secured by a privilege over these implements.

ARTICLE 931

1. House and agricultural rents for two years or for the duration of the lease, if less than the two years, and all sums due to the lessor by virtue of the contract of lease, are secured by a privilege over all attachable movables and crops existing on the leased property and belonging to the lessee.
2. Subject to the provisions relating to stolen or lost property, this privilege is enforceable even when the movables belong to the wife of the lessee or to a third party, as long as it is not established that the lessor had knowledge, at the time the movables were brought on to the leased property, of the existence of a third party's rights.

3. This privilege is also enforceable over movables and crops belonging to a sub-lessee, if the lessor had expressly prohibited sub-letting. If sub-letting was not prohibited, the privilege will only be enforceable up to the amount due by the sub-lessee to the principal lessee on the date a formal summons is served by the lessor upon the sub-lessee.
4. These privileged claims are payable out of the proceeds of sale of such movables and crops subject so such privilege, immediately after the claims above-mentioned, with the exception of claims in respect of which the privilege does not operate as against the lessor in as much as he is a possessor in good faith.
5. If movables and crops so charged are removed from the leased property, notwithstanding the objection of the lessor or without his knowledge, and the movables remaining on the property are not sufficient to secure the privileged claims, the privilege is enforceable on the movables and crops so removed subject to right acquired on these movables and crops by third parties in good faith. The privilege shall remain in force for three years from the date of the removal, even to the detriment of a third party's rights, if the lessor effects within the prescribed time limit an attachment on the movable sand crops removed. If however, the movables and crops are sold to a purchaser in good faith in the market by public auction or by a merchant dealing in similar articles, the lessor must reimburse the purchaser with the price.

ARTICLE 932

1. Sums due to hotel proprietors by a traveller for accommodation, food and expenses incurred for his account, are secured by a privilege over the things brought by the traveller to the hotel or its annexes,
2. Unless it can be shown that the hotel proprietor knew of the existence of a third party's rights over these things at the time they were brought on to the premises, this privilege may be enforced on these things, even if they do not belong to the traveller, provided that they are not lost or stolen property.

A hotel proprietor may, if he has not been paid in full, object to the removal of these things, and if they are removed notwithstanding his objection or without his knowledge, the privilege continues to be enforceable on them, subject to the rights acquired by third parties in good faith.

3. A hotel proprietor's privilege has the same rank as a lessor's privilege, should the things in question are subject to both claims, and the first in date will have priority, unless it is not enforceable as against the other.

ARTICLE 933

1. Sums due to the vendor of a movable for price and accessories are secured by a privilege over the movable sold; this privilege is enforceable as long as the movable sold preserves its Identity, subject to the rights acquired in good faith by third parties and subject to the special provisions applicable in commercial matters.
2. This privilege follows in rank privileges over movables above referred to. It operates, however, as against the lessor and the hotel proprietor, if it can be proved that they had knowledge of such privilege it the time the thing sold was brought on to the leased property or into the hotel.

ARTICLE 934

1. Co-owners who have partitioned a movable have a privilege over this movable in respect of their respective remedies against each other resulting from the partition, and for payment of any difference reverting to them in the partition.
2. The privilege of a co-partitioner has the same rank as a vendor's privilege, if the movable in question be subject to both rights, the first in date will have priority.

SPECIAL RIGHTS OVER IMMOVABLE

ARTICLE 935

1. The price and accessories due to the vendor of an immovable secured by has a privilege over the immovable sold.
2. Such privilege must be inscribed, despite the transcription of the sale, and its rank is fixed by the date of inscription.

ARTICLE 936

1. Sums due to contractors and architects who have been entrusted with the erection, reconstruction, repair or maintenance of buildings or other works, have a privilege over such works but only in respect of the increase in value resulting from such works as at the time of the sale of the immovable.
2. Such a privilege must be inscribed: its rank is fixed by the date of its inscription.

ARTICLE 937

Co-owners who have partitioned an immovable have a privilege over this immovable in respect of their respective remedies against each other resulting from the partition, including their right to claim payment of any difference reverting to them in the partition. Such a privilege must be inscribed, and its rank is fixed from the date of its inscription.

BOOK FIVE

PROTECTION OF RIGHTS AND PUBLICITY

PART ONE

REGISTRATION

CHAPTER ONE

REGISTERING ACTS RELATIONG TO IMMOVABLES

ARTICLE 938

All acts that create transfer or amend the right of ownership or other rights in rem, on real estate must be publicized by registration.

ARTICLE 939

The following acts are also subject to registration:

1. The Judgments or other judicial decisions ordering the creation, transfer, or amendment of a right mentioned in Article 938
2. The companies' contracts in which the use of real estate is granted for unlimited period or for a period exceeding nine years.
3. Real estate leases for a period of more than nine years.
4. Registering the lawsuits related to the rights mentioned in the previous figures.
5. All acts that legally required to be registered.

ARTICLE 940

Acquiring rights in rem on real estate due to marriage or inheritance is registered according to the provisions of the Personal Status Law.

ARTICLE 941

Registration is the only valid evidence for ownership of the rights provided in the Articles 938 and 939. If these rights are related to publicize deficient, does not affect third party even if it agreed in a date prior to the date of the registered documents.

ARTICLE 942

The effect of subsequent registrations for an act related to the same right is taken according to the order of obtaining registration. The effectiveness of subsequent registrations requires a continuous sequence, starting from the end to the original act.

ARTICLE 943

Judicial requests relating to the rights mentioned in Articles 938, 939 and 940 - must be registered that person who brings an action in a court of law.

ARTICLE 944

Registration shall only be based on a judgment or another judicial decision, an official document, or with special certified written document.

ARTICLE 945

The person requesting registration must present the original document or a certified copy of it, and a copy with notification is sufficient to the registration of judicial applications.

ARTICLE 946

The document required to be registered, should be accompanied, a memorandum of two original copies, containing the following data: -

1. The full names of the parties and their place of business
2. Mentioning the document that requests registration and mention its date

3. Mentioning the public servant who issued the document or the judicial authority that issued the ruling.

ARTICLE 947

The registration must be made in the immovable registry office in which the properties are located.

ARTICLE 948

The documents mentioned in the Article 945 shall be kept in this office. The contents of the memorandum referred to in Article 946 must be written or recorded in special registration and must be returned back to the applicant of the registration one of the two original copies which will be an indication of the occurrence of the registration.

ARTICLE 949

The notarize public servant who receives or verifies the document subject to registration, should make sure that the registration is completed within a period not exceeds fifteen days from the date of the documentation.

CHAPTER TWO

PUBLICATION OF IMMOVABLE REGISTRATIONS

ARTICLE 950

Access to immovable registration is permitted to anyone who requests so, upon to a request, shall be issued, copies of the registrations or certificates proving their absence and in relation to specific immovable.

CHAPTER THREE

REGISTRATION OF SPECIAL MOVABLE

ARTICLE 951

Publication must be made by registering it in special registration and according to the conditions established by the special laws - acts that create, transfer, or amend rights related to:

1. Ships and vessels
2. Airplanes
3. Motor vehicles.

OFFICIAL MORTGAGE REGISTRATION

PROCEDURES FOR REGISTERING, RENEWING, AND ABOLISHING THE OFFICIAL MORTGAGE

ARTICLE 952

The official mortgage is registered at the real estate registry office where the property is located. The official mortgage takes its degree from the date of its registration.

ARTICLE 953

In order to make the registration - the applicant must present the document establishing the mortgage accompanied by a memorandum of two original copies containing the following data:

1. The full name of the debtor and the creditor and headquarter of their operations.
2. Mention the event that caused the official mortgage.
3. The amount for which the registration was made.
4. Interest and its payment method.
5. Registration period.
6. Descriptions of the property burdened with the official mortgage.

ARTICLE 954

After the registration is completed, one of the two original notes as an indication of registration has occurred should be returned to the creditor.

PART THREE

IMMOVABLE REGISTRATIONS

CHAPTER ONE

TYPES OF IMMOVABLE REGISTRATIONS

ARTICLE 955

An office of real estate shall be established in every court of appeals of the republic. It registers the mentioned acts in the fifth book of the Civil Code, and registered in the official mortgages in accordance with Article 845 and following articles of the Civil Code.

ARTICLE 956

The office is headed by a clerk, in the position of real estate record keeper who will be responsible for keeping and organizing these registrations.

ARTICLE 957

The immovable registrations consist of:

1. General System of Registration
2. Special records for registrations.
3. Special register for Documents.

Every document submitted for registration or for the registration of the official mortgage must be referenced in the public register, for system with the date, parties and properties referred to the document.

Each document is given a sequential serial number.

The special records of registrations must mention, with similar procedures - the documents submitted for registration.

It must be noted in the special record of registrations - writing, renewal and write-off of the official mortgages.

ARTICLE 958

A judge in the Court of Appeal that locates in the jurisdiction of the Office of immovable Registrations must sign each sheet of the public registration papers and special registrations.

Registrations should be written consecutively, without leaving empty space, or a line or addition.

The record keeper must close and sign on the documents at the end of each day, and if the record keeper does not observe the rules relating to the keeping and protecting of the registrations, is punished with a fine of up to 500 Somali shillings, unless the act is more severe crime.

Translator's Biography.

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